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**The effectiveness of Monitoring
Mechanisms on Women's Human Rights**
The role of culture and NGOs

Supervisor

Ch. Prof. Sara De Vido

Assistant supervisor

Ch. Prof. Arianna Vettorel

Graduand

Chiara Luparelli
849340

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*“Le donne hanno sempre dovuto lottare doppiamente.
Hanno sempre dovuto portare due pesi, quello privato e quello sociale.
Le donne sono la colonna vertebrale della società.”*

Rita Levi Montalcini

“La violenza non è un raptus. E’ una scelta sbagliata, figlia di una cultura malata.”

RaiRadio2, 25 Novembre 2019

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My heart is divided among three wonderful cities: Seville, Treviso and Venice. In each one, over the last 6 years, I had the chance to meet wonderful people, whether Professors or young women, who inspired me with their commitment towards the fight against gender inequalities and all sorts of violence perpetrated against us, women and girls, worldwide.

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Abstract

Come si evince dal titolo, il tema principale della presente Tesi sarà quello dei Diritti delle donne, la loro affermazione e protezione a livello internazionale. Nello specifico, si prenderanno in considerazione i due principali Trattati relativi alla protezione delle donne da violenza e discriminazione: la Convenzione delle Nazioni Unite sull'Eliminazione di tutte le forme di discriminazione contro le donne, entrata in vigore nel 1981, e la Convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti delle donne e la violenza domestica, entrata in vigore nel 2014 (nota come 'Convenzione di Istanbul'). Ciascuno di questi trattati prevede la presenza di un comitato di esperti il cui ruolo è quello di vigilare ed aiutare gli Stati membri nel rispetto e nell'attuazione degli obblighi e delle misure previste dalle Convenzioni stesse. L'effettiva presenza ed impatto del lavoro di tali Comitati (o meccanismi di monitoraggio) variano però a seconda dell'area socio-politica e del singolo Stato preso in esame.

Nell'Introduzione, si esaminerà velocemente il sistema internazionale di protezione dei Diritti Umani; in primo luogo verrà fatto un excursus tra i principali Trattati nell'ambito delle Nazioni Unite, per poi fare lo stesso con le Convenzioni del Consiglio d'Europa. In seguito, verranno esplicate le funzioni, scopi, significato e tipologie dei meccanismi di monitoraggio presenti nei Trattati precedentemente citati, per poi concentrarsi sulle specificità delle '*reporting procedures*', il ruolo dei Comitati posti a monitoraggio ed i compiti che gli Stati hanno verso questi ultimi. Seguirà un riassunto del contenuto dei vari Capitoli della presente Tesi.

Nel Primo Capitolo si esamineranno tutti quegli elementi di matrice culturale e 'tradizionale' che han permesso la creazione di un clima di tolleranza nei confronti delle disuguaglianze di genere e della discriminazione della donna in ogni ambito, dalla famiglia, al luogo di lavoro, alle questioni di eredità e la possibilità di richiedere il divorzio. Si esaminerà in primis il concetto di 'normalità' e come questo abbia implicato a lungo, per la donna, una situazione di

inferiorità e subordinazione. Oltre a ciò, si investigherà il significato di concetti come ‘società patriarcale’, ‘dicotomia pubblico vs. privato’, ‘genere’, ‘stereotipo’, ‘stereotipo composito’, ‘discriminazione’ e ‘discriminazione multipla’, così come il loro ruolo nell’accettazione generale della donna come essere inferiore e della violenza come lecito metodo di controllo su di essa. Tutti questi concetti hanno altresì portato a forti resistenze da parte di molti Paesi – resistenze che persistono ancora oggi – nei confronti dell’accettazione della donna come essere pari all’uomo e nella promozione di una sua presenza attiva in situazioni dirigenziali e di potere politico ed economico, così come nei ruoli ‘tipicamente maschili’ quali dirigente di azienda o alto funzionario diplomatico. Tali resistenze e i ruoli e comportamenti considerati ‘normali’ o ‘appropriati’ per le donne si trovano anche tra le ragioni per cui i diritti e l’uguaglianza tra uomo e donna sono emersi e si sono affermati a livello interazionale molto più tardi rispetto – ad esempio – ai diritti sociali e politici più in generale.

L’attenzione si sposterà quindi sull’evoluzione, a livello delle Nazioni Unite, della protezione della donna da discriminazione e violenza; si vedrà il percorso che ha portato, dai primi lavori di interpretazione di trattati già esistenti al fine di attuare i principi di uguaglianza e non-discriminazione, alla concezione e creazione di un trattato ad-hoc nel 1979: il Trattato CEDAW. Al fine di comprendere meglio l’importanza di questa Convenzione, verranno spiegati i principi e concetti più importanti che ne costituiscono la base (morale in primis), come uguaglianza, non-discriminazione, obblighi positivi in capo agli Stati e responsabilità. La Convenzione del 1979 verte principalmente sull’eliminazione della discriminazione di genere, ma si è poi evoluta tramite il lavoro del Comitato annesso fino ad includere la lotta ed il divieto di ogni forma di violenza contro la donna.

Il concetto di ‘Violenza contro le donne’ verrà quindi spiegato, insieme a tutti gli aspetti che ne fanno una questione complicata, contorta ed ancor oggi difficile da affrontare e combattere. A questo proposito, si ritornerà in parte alle questioni di ‘tradizione’ e ‘normalità’ ed al concetto di ‘genere’ quali motivi fondanti dell’ammissione della violenza tra i comportamenti socialmente accettati, illustrando poi come discriminazione e violenza costituiscano invece una

violazione di diversi diritti fondamentali, la cui conseguenza più estrema può arrivare ad essere la morte stessa della vittima.

La seconda parte del Primo Capitolo indagherà e spiegherà nel dettaglio le ragioni che hanno portato a definire la Convenzione ONU del 1979 come la ‘Carta dei Diritti delle Donne’. Si riprenderanno concetti basilari quali uguaglianza di genere e responsabilità degli Stati membri, per poi illustrare le caratteristiche principali del Comitato CEDAW, l’organo di monitoraggio previsto quale supporto agli Stati nel rispetto ed attuazione delle clausole e principi della Convenzione stessa. Ciò che è importante sottolineare sin da subito è l’indipendenza dei membri di tale Comitato, che quindi agiscono nell’interesse del rispetto per i Diritti Umani e non per lo Stato da cui provengono; oltre a ciò, i Comitati posti a monitoraggio sono concepiti quale aiuto agli Stati, e non organo giudicante, anche se quest’ultima concezione è ancor oggi diffusa.

L’ultima parte del Capitolo si interesserà invece della Convenzione del Consiglio d’Europa del 2011. A tal proposito, verrà illustrato in primo luogo l’approccio basato sulle così dette ‘3P’ (Prevenzione, Protezione, Prosecuzione/Repressione), il percorso che ha portato ad una maggiore attenzione per la necessità di prevenire violenza e discriminazione e cosa si intende per ‘misure preventive’. Ultima ma non meno importante, verrà esaminata l’apertura della Convenzione all’accesso da parte di Stati non membri del Consigli d’Europa e le conseguenze di tale apertura e potenziale beneficio che la comunità internazionale può trarre da un approccio particolare come quello di tale Trattato.

Prima di procedere col Secondo Capitolo, la presente Tesi include una digressione in cui si approfondisce l’importanza della giurisprudenza delle Corte Europea dei Diritti Umani per la concezione che la Convenzione di Istanbul ha di ‘Violenza Domestica’. E’ necessario precisare sin da ora che la considerazione di tale fenomeno come specifico e diviso da quello generale di ‘Violenza contro le donne’ non è presente in nessun documento o Trattato precedente il 2011; allo stesso tempo, la Convenzione del Consiglio d’Europa risulta fondamentale e rivoluzionaria in quanto, in primis, include anche uomini e ragazzi tra le potenziali vittime – dirette o indirette – di violenza domestica, concetto che va contro un tabù esistente da sempre, legato agli stereotipi di genere che riguardano

questa volta il sesso maschile.

Il Secondo Capitolo si focalizza sulle procedure di monitoraggio e collaborazione tra i Comitati di esperti e gli Stati membri previste rispettivamente dalla Convenzione CEDAW e da quella di Istanbul. In primo luogo verrà illustrata nel dettaglio la procedura della Convenzione delle Nazioni Unite, focalizzandosi sui compiti ed obblighi in capo agli Stati e sulle funzioni che il Comitato CEDAW svolge verso questi ultimi. Si potrà apprezzare come la Convenzione abbia previsto l'obbligo alla formulazione di report periodici (ogni 4 anni) come parte di un dialogo tra gli Stati membri ed il gruppo di esperti, dialogo strumentale ad un graduale miglioramento della situazione della donna a livello prima nazionale e poi internazionale. In seguito, verranno esposti i passi della procedura prevista dalla Convenzione di Istanbul. Per la maggior parte, le due procedure si somigliano in termini generici, in quanto entrambe prevedono l'obbligo a report periodici e la possibilità per il gruppo di esperti di effettuare visite negli Stati membri in determinate situazioni. Tuttavia, la Convenzione CEDAW, tramite il Protocollo del 1999, prevede la possibilità per i singoli di sottoporre supposte violazioni dei loro diritti all'attenzione del Comitato, meccanismo inesistente nell'ambito del Consiglio d'Europa.

In entrambi i casi, un'attenzione particolare verrà posta sull'obbligo che le due Convenzioni impongono agli Stati membri riguardo il coinvolgimento, all'interno del processo di elaborazione dei report, di tutti quegli enti non governativi che si focalizzano sul rispetto per i diritti – in questo caso – delle donne, sulla lotta a discriminazione e violenza, sulla diffusione di informazioni riguardo tali fenomeni e sull'organizzazione di tutta una serie di servizi ad-hoc per le vittime, superstiti e per i loro figli. Il ruolo di tali enti verrà poi ripreso nel terzo capitolo e nelle Conclusioni.

Alla fine del Secondo Capitolo, ci si concentrerà sull'importanza cruciale che le due Convenzioni per la protezione delle donne dalla violenza danno al dialogo tra Comitato di esperti e Stati membri. Verrà ripresa la concezione formale (intesa come 'prevista nei trattati') di tale dialogo come strumentale al graduale miglioramento e rispetto per i diritti della donna, per poi confrontare tale visione

con la realtà, in cui i Paesi spesso percepiscono la presenza di un'entità esterna come un'intrusione o un giudizio e non come supporto o partner.

Il Terzo Capitolo è probabilmente quello più 'pratico'. Infatti, la prima parte verterà su tutti quegli aspetti che influenzano negativamente l'impatto dei meccanismi di monitoraggio sulle performance degli Stati per quanto concerne il rispetto dei principi di uguaglianza e non-discriminazione e la lotta alla violenza contro le donne e la violenza domestica. Si preciserà come certe ragioni dipendono da scelte deliberate dei Governi, che firmano Trattati sui Diritti Umani (e diritti delle donne tra questi) per motivi strategici, quando in realtà continuano a violarli e a non rispettare gli obblighi di '*periodic reporting*'. Dall'altra parte, concetti come '*monitoring fatigue*' verranno inclusi, dimostrando come non siano scelte deliberate degli Stati ma conseguenze della complessità del sistema di protezione dei Diritti Umani esistente al giorno d'oggi. Tale sistema pone infatti delle difficoltà per certi Paesi (come quelli di recente costituzione democratica o in via di sviluppo), in quanto quasi tutti i Trattati di protezione delle varie categorie di diritti o di persone prevedono un meccanismo di monitoraggio, ognuno con i relativi obblighi imposti in capo agli Stati (*periodic reporting in primis*). Molti Paesi in via di sviluppo però, nonostante mostrino la loro volontà ed impegno per il rispetto dei Diritti Umani, mancano delle infrastrutture adeguate per adempiere agli obblighi che i Trattati prevedono; in altri casi, non sono in possesso di sufficienti risorse – materiali e umane – per fornire servizi adeguati e rispettare le clausole cui si sono sottoposti (nel caso della Convenzione CEDAW, i servizi di protezione delle vittime e di adeguata punizione dei responsabili). Sarà dunque possibile capire come il minore impatto delle procedure poste ad aiuto degli Stati non dipendano sempre dalla volontà di non rispettare gli impegni presi, ma che spesso ciò sia conseguenza della struttura stessa del sistema internazionale di protezione dei diritti. Le principali conseguenze sia di atti deliberati che di mancanza di infrastrutture si concretizzano in grandissimi ritardi o nella mancata consegna dei report da parte degli Stati membri, soprattutto per quanto concerne il Comitato CEDAW. In altri casi, i documenti formulati sono superficiali o non includono informazioni veritiere, motivo per cui i gruppi di esperti si avvalgono

dell'aiuto degli enti non statali, ai quali richiedono i così detti 'rapporti ombra'. Le conseguenze di tale superficialità o frammentazione delle informazioni nei report si ripercuotono sia sul livello di rispetto delle Convenzioni e dei requisiti preposti che sul dialogo tra Stati e Comitati, con effetti poi sulla situazione delle donne. Una piccola digressione riguarderà due concetti e strumenti ideati nel contesto delle Nazioni Unite per ovviare alla monitoring fatigue e per ottimizzare gli effetti del monitoraggio in generale: riferimenti incrociati tra report ai diversi gruppi e, per quanto riguarda la Convenzione CEDAW nello specifico, l'elaborazione di report 'compositi' (contenenti informazioni di norma incluse fino ad un massimo di quattro resoconti).

L'ultima parte del Terzo Capitolo vedrà l'attenzione spostata dalla Convenzione ONU a quella più recente in tema di violenza contro le donne e violenza domestica: la Convenzione di Istanbul. Nello specifico, si analizzeranno due Report finali del Gruppo di Esperti previsto dalla Convenzione stessa (GREVIO) e due 'rapporti ombra', tutti pubblicati tra il 2018 e gennaio 2020.

In primo luogo si analizzeranno le informazioni riguardanti aspetti molto controversi inclusi nelle clausole del Trattato, come l'organizzazione di servizi di protezione, una corretta informazione sui fenomeni quali "violenza contro le donne", "violenza domestica" e le possibilità che il diritto internazionale da a vittime e testimoni, l'obbligo delle autorità ad indagare in maniera tempestiva e senza idee basate su stereotipi o pratiche discriminatorie. In secondo luogo, l'analisi si concentrerà su tutti quegli Articoli o argomenti per quali i report hanno rivelato il ruolo cruciale delle Organizzazioni Non Governative quali enti che attuano - spesso più degli Stati stessi - le misure indicate dagli Articoli della Convenzione di Istanbul. A tal proposito, si analizzerà anche il grado e la volontà effettiva che i Paesi considerati (Italia, Spagna e Francia) hanno riguardo la collaborazione con tali enti, il loro coinvolgimento nella progettazione dei report e delle leggi anti-violenza e anti-discriminazione, tutti aspetti previsti dalla Convenzione stessa.

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LIST of ABBREVIATIONS

HR	Human Rights
IHR	International Human Rights
IL	International Law
IHRL	International Human Rights Law
WHO	World Health Organization
UN	United Nations
UDHR	Universal Declaration of Human Rights
UN GA	United Nations General Assembly
ECOSOC	Economic and Social Committee
HRC	Human Rights Council
CAT	Committee Against Torture

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
‘Belém do Pará’ Convention	Inter-America Convention on the Prevention, Punishment and Eradication of Violence Against Women
UN DEVAW	United Nations Declaration on the Elimination of Violence Against Women
CEDAW	UN Convention on the Elimination of All Forms of Violence Against Women
CtEDAW	Committee on the Elimination of All Forms of Violence Against Women
EU	European Union
CoE	Council of Europe
CoM	Committee of Ministers
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EAFR	European Agency for Fundamental Rights

‘Istanbul Convention’	Council of Europe Convention on preventing and combating Violence Against Women and Domestic Violence
GREVIO	Group of Experts for the Elimination of Violence Against Women
VAW	Violence Against Women
DV	Domestic Violence
FGM	Feminine Genital Mutilation
GR	General Recommendation
Art.	Article
Artt.	Articles
NGOs	Non-Governmental Organizations
CSOs	Civil Society Organizations
NHRI	National Human Rights Institutions

INTRODUCTION:
International Human Rights and
Monitoring Mechanisms

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International Human Rights: the United Nations and the European Context

Human Rights are nowadays the undoubted bedrock of global society and institutions. Since the end of WW2 and the creation of worldwide diplomatic and policy-making entities, fundamental rights have been the basis of most discourses, international Treaties and relevant documents. Right after the horrors of the second global conflict, the international community started to build a whole body of regulations and Treaties establishing fundamental rights as inalienable basis of everyone's life, rights that should be granted and protected by every Country. The first and most important context where Human Rights Law started to be elaborated is the United Nations, with the 1948 "Universal Declaration of Human Rights"¹. Since then, the panorama of International Human Rights Treaties got enriched of a wide range of documents, each concerned with a set or a specific kind of rights; the most important ones are enlisted here. The 1965 "International Convention on the Elimination of all forms of Racial Discrimination"²; the two 1966 International Covenants (on Civil and Political³ and on Economic, Social and Cultural Rights⁴); the 1984 "Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment"⁵; the 1989 "Convention on the Rights of the Child"⁶. There is one more United Nations Convention that needs to be cited, since it constituted a revolutionary moment in the history of Human

¹ UN General Assembly, *Universal Declaration of Human Rights*, December 10th 1948. Adopted at the 183rd Plenary Meeting of the UN General Assembly through Resolution 217 A (III).

² UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, December 21st 1965 (entered into force on January 4th 1969). Adopted through General Assembly Resolution 2106 (XX).

³ UN General Assembly, *International Covenant on Civil and Political Rights*, December 16th 1966 (entered into force on March 23rd 1976). Adopted through General Assembly Resolution 2200A (XXI).

⁴ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, December 16th 1966 (entered into force on January 3rd 1976). Adopted through General Assembly Resolution 2200A (XXI).

⁵ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10th 1984 (entered into force on June 26th 1987). Adopted through General Assembly Resolution 39/46.

⁶ UN General Assembly, *Convention on the Rights of the Child*, November 20th 1989 (entered into force on September 2nd 1990). Adopted through General Assembly Resolution 44/25.

Rights Law and since it is one of the two focuses of the present Dissertation: the 1979 “Convention for the Elimination of All forms of Discrimination Against Women”⁷, also known as the CEDAW Convention (UN OHCHR, 2019). Apart from the United Nations, Human Rights and their protection have been established as key issues also at regional levels, with varying perspectives according to the socio-cultural background. The main contexts that gave important contributions to the development and widening of International Human Rights Law have been the American, African and European contexts, with the related Courts and Conventions.

The present work, apart from dealing with how Human Rights are conceived at the UN level, also deals with the Council of Europe; thus, it is necessary to enlist the major Treaties ratified within this context. The 1950 “European Convention for the Protection of Human Rights and Fundamental Freedoms”⁸; the 1965 “European Social Charter”⁹; the 1989 “European Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”¹⁰; the 2002 “Criminal Law Convention on Corruption”¹¹; the 2008 “Council of Europe Convention on Action against Trafficking in Human Beings”¹². The latest and most important Treaty for the interests of the present work is the 2014 “Council of Europe Convention on

⁷ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, December 18th 1979 (entered into force on September 3rd 1981). Adopted through General Assembly Resolution 34/180.

⁸ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ETS No5). Adopted in Rome on November 4th, 1950; entered into force on September 3rd, 1953.

⁹ Council of Europe, *European Social Charter* (ETS No35). Adopted in Turin on October 18th, 1961; entered into force on February 26th, 1965.

¹⁰ Council of Europe, *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ETS No126). Adopted in Strasbourg on November 26th 1987, entered into force on February 1st 1989.

¹¹ Council of Europe, *Criminal Law Convention on Corruption* (ETS No173). Adopted in Strasbourg on January 27th, 1999; entered into force on July 1st, 2002.

¹² Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings* (CETS No197). Adopted in Warsaw on May 16th, 2005; entered into force on February 1st, 2008.

preventing and combating violence against women and domestic violence”, also known as ‘Istanbul Convention’¹³ (Council of Europe, 2019).

It is important to cite the presence of regional Human Rights regulations at the regional level since it is here that culture and socio-cultural background often constitute great controversies when it comes to the acceptance and actual implementation of International Human Rights Law. As, will be showed later on in the present dissertation, *culture* constitutes for some Countries a strong element justifying non-compliance or Reservations, or even persistent breaches to ratified Treaties. What is known as *cultural relativism* – the use of culture, religion and/or tradition as justifications for partial adherence to Human Rights instruments or even for Human Rights violations – is strongly linked to the concept of ‘decoupling’, better discussed in Chapter 3 (Leib, 2011:49; Cole, 2012:1132).

Monitoring: definition, actors, function and aims

How can the international community or regional entities ensure the actual respect for Human Rights and the realization of Convention provisions within member-States? Through monitoring. Monitoring has been defined by the OHCHR as “systematic gathering of information with the view of evaluating compliance of Human Rights commitments”. More in general terms, it can be seen as both a method of assessing the conduct of duty bearers (States) and improving Human Rights protection and the examination of occurrence and of the nature of Human Rights violations (De Beco, 2011:1-2). Most of the Conventions established either within the United Nations or at the regional level include a committee of experts – the monitoring body – responsible for supervising member-States’ behaviour and helping them with difficulties as to achieve full implementation. The monitoring process, by the way, does not end in the relation State-committee and the examination of States’ account and behaviour. As to verify the veracity of what is referred by Governments’ officials to the monitoring

¹³ Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence* (CETS No210). Adopted in Istanbul on May 11th, 2011; entered into force on August 1st, 2014.

body, the latter receives the support of more objective actors out of political interests: NGOs, NHRIs and CSOs.

Monitoring has three main functions: check on States' compliance with Human Rights Treaties, standard setting and cooperation with CSOs. The most frequently used strategy to assess Countries' compliance with the Conventions they have ratified is *reporting*, which implies a Country-by-Country basis and foresees a constant exchange of information between the Committee and the reporting State. Since monitoring is an ongoing process, at the end of a cycle the monitoring body establishes required changes, advice and wished achievements to be verified in the following State report. In a word, the body of experts set standards to be realised by the observed Country. As hinted, monitoring – and reporting among its forms – implies a participatory perspective and the intervention and contribution of many non-State actors, which assist the Committee in the evaluation of Treaty compliance.

The instrument of monitoring was established with an action-oriented approach aimed at preventing Human Rights violations as well as improving the conduct of States towards the rights of their citizens. It can be defined as an 'action-oriented' process because gradual improvements are perceived as possible only through the involvement of a wide range of entities – both within and out of Governments – and through the constant, constructive dialogue between the appointed body and member-States.

According to De Beco (2011:2-4), Human Rights Monitoring Mechanisms can be classified in two main groups. On the one hand, there are *non-judicial* vs. judicial mechanisms. *Non-judicial* mechanisms differ from judicial ones in the following features. The former do NOT issue binding decisions, but Recommendations, where they give Countries advice on how to give greater effect to the Treaties. They evaluate the situation of State-parties through cooperation and a permanent dialogue with them. They function through reports, which are the basis for Recommendations. They can also visit member-States directly, meaning that monitoring applies to real-life situations, not only to formal concepts. The work of non-judicial monitoring mechanisms can have a

mainstream effect on Public Administration, since Governments' officials involved in the process need to be aware of and familiar with of the Human Rights issues implied in their fields.

The second group includes *non-political* vs. political Human Rights mechanisms. *Non-political* ones are composed of experts, who do not act on behalf of the member-State they come from, but on personal capacity, ensuring the objectivity of their work. The main difference with *political* mechanism concern the approach, since the *non-political* ones evaluate compliance with Human Rights Treaties – giving a legal monitoring – but, first of all, they provide experts' advice. *Political mechanisms*, on the other side, are involved in monitoring procedures in different degrees, putting pressure on Countries as to implement those Recommendations they consider appropriate.

Apart from this division, De Beco (2011:6-8) gives a further tripartite classification of monitoring mechanisms, according to their legal basis, their 'role' towards already existing documents and the recipients of their provisions. Monitoring mechanisms can be *Treaty* or *non-Treaty based*. The former are created by Treaties and they are mainly tasked with Country monitoring. The main advantage of this kind of mechanism is their solid legal basis (the Treaty itself), where the obligation for Countries to submit periodic reports is established. The Treaty also establishes, most times, that reports are examined by the committee of independent experts to which we have referred earlier, and it is precisely the independence and expertise of members to these Committees that give their Recommendations a high degree of legitimacy. *Non-Treaty-based* mechanisms are created by Resolutions, hence implying most times a broader and more flexible mandate. At the same time, the main weakness of non-Treaty based mechanisms is exactly the broader mandate, since it often implies lack of resources compared to Treaty-based mechanisms. The second classification concerns whether a mechanism is a substitute or a reinforcing element of prior ones. *Substitute* mechanism often take place of judicial ones, being the result of new Treaties and make Recommendations on a Country basis. On the other hand, reinforcement mechanisms are created to strengthen the protection of rights already established by judicial mechanisms; their monitoring function hence refers

to those rights included in already existing Treaties. Lastly, monitoring mechanism have followed the development of Human Rights Law. In fact, while those foreseen by earlier Treaties are defined as related to *substantive Rights* (like the two Covenants), the most recent Treaties and related monitoring mechanisms concern the protection of *vulnerable groups* (ethnic minorities, persons with disabilities and women among others).

On the basis of De Beco's explanation (2011:178-180), there are two basic principles at the basis of the work of monitoring mechanism. On the one side, *cooperation* is fundamental, especially for non-judicial mechanisms since they rely on the cooperation of member-States. the latter, in fact, allow the mechanism to be effective by submitting reports and receiving its advice. Proper monitoring is hence feasible only if Countries are willing to properly collaborate with the assigned body of experts. The second crucial principle is *confidentiality*, which is also instrumental to cooperation. In fact, if member-States know that the procedure ensure their protection from negative consequences on the international arena, they are more willing to be evaluated by an external entity. Conversely, if documents and the steps are publicly available, Countries may be more reticent to expose their lacks, fearing that those will be negatively exploited by third parties.

Monitoring through reporting

We have hinted at the fact that, both at the UN and regional level, the main tool used to monitor member-States' compliance with Human Rights Treaties provision is reporting (Van Boven, 1997:12). This type of monitoring implies, as it will be possible to appreciate by reading the present Dissertation, a constant contact between the examined Country and the responsible Committee, but it has been also designed to promote international cooperation among member-States through the exchange of effective policies and positive practices (Alston, 1997:20). As well, NGOs and other non-State actors are crucial in evaluating the degree of evolution of State's respect for Treaty provisions. The latter also impose the obligation upon member-States to periodically submit, to the body of experts, detailed accounts on the actions undertaken to give effect to the Treaty,

but also on the difficulties and obstacles encountered in realising previously given advice of the Committee. The comprehensive character of States' reports brings not few difficulties and controversies with it, as will better explained in Chapter 3. Monitoring and reporting, as it will be possible to detect by reading the present Dissertation, are very complex processes and both their actual implementation and the effectiveness of the responsible entities are affected by complicated phenomena.

What we will see in the present Dissertation

This work is interested in assessing the main features of the monitoring mechanisms protecting women's Human Rights, for then evaluating their effectiveness and the obstacles to that.

In the First Chapter, we will explore the establishment of women's rights as Human Rights and their later emergence compared to other kinds of rights. We will underline the constructed nature of most of the elements leading to a 'hierarchy of sexes' and hindering proper consideration of women's rights. Another major issue will be the development of the protection of women's rights, from interpretation of already existing international treaties to the conception – and later widening – of a single-issue Treaty with its related monitoring body. The elements constituting the basis of international protection of women's rights will be explored side by side with those making the 'Violence Against Women' phenomenon such a peculiar and complicated issue. Later on, we will focus on the CEDAW Convention as to understand why it was and still is considered as the first 'Bill of Rights of Women', underlining the main crucial and revolutionary concepts within its provisions as well as the features of the CEDAW Committee. Last, the focus will shift to the second and most recent Convention protecting women from violence but also condemning the 'Domestic Violence' phenomenon in a peculiar way: the 2014 Council of Europe 'Istanbul Convention', with its differentiating features and revolutionary '3Ps' approach to both VAW and DV. The role and composition of the GREVIO Committee will be set out just like the CEDAW Committee. A digression will then be made to explore the relevance of

the ECtHR jurisprudence for the Istanbul Convention conception and criminalization of Domestic Violence, comparing its advantages and debatable points.

The Second Chapter will be concerned with the explanation of the two monitoring procedures: the one established within the CEDAW Convention and responsibility of the Committee and the one established within the Istanbul Convention, to be fulfilled by GREVIO. More specifically, we will understand the complex set of tasks both the Committees and member-States have to fulfil. The outcomes of the respective procedures will be outlined as well, seeing how improvements should be eased by member-States through dissemination. Two further elements of concern will be, towards the end of the Chapter, the importance of NGOs and non-State actors and the dialogue between each Country and the assigned Committee, underlining their potential positive effects on Human Rights improvements.

In Chapter 3, we will investigate and understand the main problems that have lowered a proper effectiveness of the CEDAW monitoring procedure, exploring the reasons why member-States have frequently submitted partial or highly delayed report or have even failed to respect their reporting obligations. As it will be possible to see, reasons for delays can be due to States' lack of resources, problems in respective overlapping deadlines of the various accepted monitoring procedures or, on the other side, to deliberate actions subsequent to tactical actions by the Government. The second main point of this Chapter will be the consequences either involuntary or voluntary non-compliance with periodic reporting obligations have both on the dialogue between the State and the responsible Committee of experts and on compliance with Human Rights Treaties more in general. Two possible solutions the CEDAW Committee have recently formulated to solve both 'monitoring fatigue' and the lack of periodic reports will be explained as well. The last section of Chapter 3 will be interested in the analysis of some highly recent reports of and to the GREVIO Committee. The main interest, at this respect, is to underline the great relevance they have for victims of DV and VAW, but also for the training of professionals. NGOs and

other non-State actors have thus a great impact on the respect of the Istanbul Convention provisions and, namely, of the ‘3Ps’ approach.

Conclusions will be elaborated in the end. The main aim of Conclusions to the present Dissertation is to understand the crucial role of NGOs and the possible positive effects a proper consideration of their work can have on many aspects. As will be set out, NGOs are fundamental both when it comes to training and support services, but another crucial task they carry out is linked to public awareness of the features and consequences of VAW and DV on society as a whole. This public awareness-raising function, if correctly understood by Governments and by individuals, can boost the positive consideration of monitoring mechanisms on women’s rights. When complete and adequate information is publicly available, the circle through which public opinion observes more closely Government’s attitude and puts pressure on it for better Human Rights performances can start. Overall, as will be better explained, this circle leads to greater consideration and impact of monitoring, hopefully boosting a deep socio-cultural change towards greater gender equality.

CHAPTER 1:

CEDAW and the Istanbul Convention

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1.1. Time perspective and VAW: 1979-2011

Social constructions and historical structural inequality

Human Rights of women, together with the acceptance and implementation of their formal and substantive equality with men, are complex and controversial issues for a set of reasons and concepts: ‘natural’ roles, gender and stereotypes and the patriarchal society. These are all interconnected issues born from deeply rooted traditions and beliefs, hence being social constructions ever since imposed on women and girls.

Throughout the centuries and their whole lives, religion and traditions have imposed over females all over the world many rules, roles and expected behaviours implying a differentiated, discriminatory treatment compared to men. These norms, thus, went along with great limitations over women and girls’ freedoms and chances for an equal access to – for example – job posts and education. Religious and cultural beliefs have existed ever since and are still nowadays part of what most societies consider ‘normal’; they are deeply rooted in everyone’s mind and, despite the power of religion have diminished in Western societies, its ancient teachings and rules dictating the place and duties of women and men are still considered valid. On the other side, in those areas and socio-cultural contexts where religion holds political power and/or influence, its teachings are among the major obstacles to the acceptance of many basic rights and to the achievement of substantive equality among individuals. It is easy then to understand how religion and traditional beliefs and imposed norms can be strong impediments to the application of international Treaties protecting women and their rights, being the latter the main focus of the present dissertation. The situation of unfair treatment women and girls have suffered ever since in any contexts, whether in explicit or latent forms, is known as ‘*historical structural inequality*’. Why? As explained here above, unequal treatment and discriminatory roles are perceived still nowadays by most societies and in most socio-cultural contexts as something which has existed ever since and as something ‘normal’, even if they are instead constructions imposed by institutions like religion and culture in general. This structural inequality has expected women to respect men

and be submissive towards them, with their decisions, freedoms and behaviour always depending on the permission or presence of a male figure besides them. Socially constructed norms coming from institutions (family, religion, traditions) are at the origin of women's multiple discrimination and of the 'gender' concept, all having in common the vision of women as inferiors in either their skills, capacities and capability to look for themselves autonomously. These issues and their negative implications for women are, as well, at the basis of the patriarchal society, unequal power relations and the deriving and connected stereotypes still present in our times.

Social constructions and imposed women's roles are consequent to, and element of, what is known as '*patriarchal society*'. It can be conceived as an unequal situation where the reference is always and only the 'male' and the 'hetero'. It can also be defined as a hierarchical system, where men traditionally dominated over women. The patriarchal society has brought to an ideological and social system of values where males and females are one opposing to the other and where violence has long been taught as one of the accepted tools to maintain men's domination and women in their 'proper' place (Ventura Franch, 2016:186; Vandenhole, 2005:147-152; Jantera-Jareborg & Tigroudjia, 2017: Chapter 1.2.4; Scott, 1986:1057-1058). Traditions and culture are implied in the patriarchal system, as well as the notion of 'gender', of which we will discuss later on in this Chapter. The consequences of such an unequal relation are to be detected in all fields of a woman's life, from job and salary, to hereditary rights, representation in politics and access to high management or diplomatic post. Traditional roles have expected women to remain within the environment perceived as 'natural' for them: the household. Unfortunately, even when females started to be a fundamental element of the workforce, society taught and imposed roles like nurse, assistant and teacher as the most 'appropriate' for women. It is easy here to detect the persistent link these jobs have with the 'typical duties' of women within the familiar context: keeping others safe, taking care and assisting children and males, etc. Consequences imply, even at present, job discrimination and huge differences in the recognition of women's skills, with their presence as CEOs,

recognized academics, scientists or high diplomatic representatives being an 'exception to normality' often regarded with suspicion.

Social constructions and traditions have taught about what people should expect from each other and about the perceived 'normality', but also the latter implied a wide range of unfair, 'gendered' impositions upon women. Earlier in the present section, the traditional opposition between males and females has been set out, and this is one of the reasons why 'normal' roles are said to have a 'gendered' origin. It is necessary to explain all the shades and uses of the 'gender' concept in order to effectively understand women's reality and the disparities they suffer in the economic, social and political contexts of their lives. Throughout the centuries, the 'gender' context has evolved and received many interpretations, with the most recent ones used to promote the worthiness of females' contributions to academia and the scientific field. 'Gender' has been traditionally intended as an objective reference, while actually being another social construction. It is defined, among others, as a system of social and sexual relations based on the opposition between the sexes and their division of their languages, symbols and roles. 'Gender' also has a link to power and the processes of power-building, where it more than often refers and implies women's submission. Together with that, the 'gender' concept and its linked opposition of men vs. women has been used by non-democratic Governments to maintain their power and control. In authoritarian regimes, strong was the connection between the 'male' and concepts like stability, power and strength, as opposed to 'female' as synonym of instability and oppositional movements. This confirms the oppositional basis of the concept, but in this kind of context and with this use, it reinforced the cliché about women's incapability to control and look for themselves, with men needing hence to control them for the sake of the State's security and power (Scott, 1986:1072). As hinted above, the latest uses of 'gender' have some positive implications. In fact, while on the one side American feminists used the term to refuse the sexually-based, oppositional distinctions of roles between males and females, its latest conception aims at re-evaluating women's contributions to culture and research.

It has been already explained how ‘gender’ was traditionally used with reference to women’s inability to control themselves and how this was exploited in building and maintaining political, non-democratic power. As well, women’s subordination and perception as ‘lower’ brought to a devaluation of the great contributions females scholars made to fields like the history of feminism and women’s rights. Generally speaking, women’s role in history and the worthiness of their academic and scientific research have long been marginalised, receiving lower credit than men’s. The various interpretations and uses of the gender concept saw diverse aims and implications, but they have all been based upon issues like ‘multiple discrimination’ and the intersectionality of both women’s sufferings and (denied) rights, concepts on which the present chapter will focus later on.

The reasons why women’s rights have been internationally recognized only later on compared to substantive ones, as it is possible to see, are mainly constituted by socially constructed behaviours, expected roles, rules and beliefs. This means that other institutions and mainstream groups imposed on men – and consequently on women – specific norms about what was expected by either of them. Women, this way, have long been deprived of their independence and of the possibility to raise demands either for their specific needs and features and about the consequences of the traditional male perspective on their lives.

Gender and the opposition between the two sexes and their roles constitutes one great dichotomy historically impeding the realization of women equality. Together with this, another factor to be considered is the *private vs. public dichotomy*. This concept originated in the first belief about Human Rights, which were thought as imposing States mainly negative obligations. States’ law had to be applied only in what was conceived as the ‘public’ sphere, while contexts like familiar relationships and the household were part of the ‘private’ one. Just like the relationship men-women, the public and private spheres were put as one counterposed to the other, with the intervention of the State and its agent in people’s “private” life and issues long believed as inappropriate. This strong division made women more vulnerable to violence and discrimination; despite the existence of fundamental freedoms, women saw negative States’ obligations impeding Governments from alleviating their sufferings, since the ‘private sphere’

coincided with those contexts where they suffered most forms of violence and discrimination (McQuigg R. J., 2017:17-22). The *private vs. public* dichotomy is hence linked to the 'multiple discrimination' concept and the hierarchy of sexes, all being again social impositions upon individuals and, more specifically, upon women.

From the previous account, it is easy to understand that the roots of historical inequality and multiple discrimination of women lie in social constructions, and not on some conscious shared decision. These social constructions are all intertwined and are still accepted as part of normality in most socio-cultural contexts despite the existence of and States' commitment to international Human Rights Treaties. Unfortunately, concepts and dichotomies like the public-private and 'gender' are not the only imposed rules negatively affecting women, their rights and the actual realization of their equality as set out in Treaties like the CEDAW. It is necessary in fact to expose and underline the 'stereotype' issue and its link with 'gender' to better understand, among others, the intersectionality of women's discrimination and the complexity of their sufferings.

Stereotypes, and more specifically those based on sex and gender, finds themselves among additional elements reinforcing the hierarchy of sexes and, consequently, lowering the acceptance and implementation of women's rights. A *stereotype* is defined as a preconception about the features of a group (and its role) within society (Jantera-Jareborg & Tigroudjia, 2017: Chapter 10.2). It is, thus, a generalization, an image we have beforehand to simplify the world. Why do stereotypes exist? Most times, they are based on prejudices, but not always in the negative sense. Alternatively, they are there to define and differentiate a category from the others, to put laws into practice or to tag and recognize what is different from the 'normal'. As far as women are concerned, stereotypes are among the most difficult elements to eradicate, both because they are rooted in people's minds and since some of them are not even conceived as unfair nor as preconceptions. As hinted earlier, what is 'normal' is socially constructed on a male and hetero bases and people struggle a lot to change perspective as to make issues like homosexuals and their equality with hetero couples part of the life and culture. This struggle becomes even stronger when it comes to women

homosexuals and their right of adopting a child (as an example). The image of lesbian couples, and of their potential right to adopt a child, are far from the traditional representation (or social dictation) of women as under the control of, or anyway side by side with, a male. Consequently, sometimes even other women have hard times in thinking of issues like homosexuality under an unusual approach based on equality, but this is all funded in the male-hetero standard we have just discussed about.

If we want to investigate women's situation and discrimination, it is necessary to narrow our focus from stereotypes in general to the notion of '*gender stereotype*'. This concept refers either to the socio-cultural construction according to physical, biological, social and sexual functions, or to the whole structure of beliefs based on personal features of men and women. "Sex" is at the clue of the understanding of '*gender stereotype*', since the latter is mainly based on sex; beside it, we have the *stereotyped sexual roles*, attributed or expected by men and women because of physical or socio-cultural constructions. The concept of 'gender' and the 'stereotype' issue brings to '*gender stereotyping*', the practice of attributing a stereotyped and preconceived belief to an individual just because he or she belongs to men's or women's group. Women suffer from many kinds of differentiated treatments; apart from 'simple' stereotypes and preconceptions and those based on 'gender' and its negative implications, they also suffer from what are known as *composite* stereotypes. They mix the 'sex' matter with other grounds of discrimination, aiming at attributing women specific (unequal) roles (Jantera-Jareborg & Tigroudjia, 2017: Chapter 10.2).

We have hinted before at the '*multiple discrimination*' matter. What are its origins? What does it imply? Where can we detect it? The concept refers to the various forms of discrimination suffered on a daily basis by women and girls worldwide, some of which are still not considered as discriminatory behaviours but falling within 'normality' (Degani, 2012:42-43). They include, among others: differentiation in jobs and power positions in firms and MNCs; unequal wages, access to divorce, right to get a driving license, vote or be voted at public elections; different parental roles and duties; low or absent possibility to move without permission or presence of a male. As we can see, the various forms of

differentiation in roles, chances, rights and benefits cover all the spheres of our society, from economics to politics, private and family life (Vandenhoe, 2005:36). Multiple discrimination is the result of the rooted beliefs we explained earlier, as well as of the gender mainstreaming perspective persistent in most societies still nowadays, which contributes to the struggles in considering women's rights as 'acceptable' in some socio-cultural areas. The contexts in which gender equality and women's rights are most difficult to be applied and monitored are where the Muslim religion still has its influence in politics and is applied in the strictest ways, with huge consequences on monitoring effectiveness. Talking about women's 'multiple discrimination' also refers to its 'intersectionality' when compared to forms of discrimination suffered by men (Schiek., Bell, & Waddington, 2007:170-172), an issue partially connected to composite stereotypes. Women, in their daily and through their whole life, suffer marginalisation and differentiated treatments for a mix of more than one discriminatory ground. First of all, they are more than often discriminated for the mere fact of being women, but then this mixes up with other prohibited discriminatory issues such as race, religion, social class and language, up to the most recent ones like sexual preferences and the desire to change their biological sex. Men, as we can deduce, have been considered the 'natural' right-bearers among human beings, while women were only expected to act, live and behave in a specific way, implying being submissive and seen under the 'inferior' perspective, which shades differed and differs through space and cultural background (Degani, 2012:41; Scott, 1986:1058-1059).

VAW: from Treaty interpretation to a single-issue Convention

Social constructions and imposed norms have long made women's discrimination 'normal'; as already explained, in this patriarchal, male-based society and set of values, violence has been among the accepted and used tools that both individuals in general and those holding political power used to maintain control. Apart from the socio-ideological system posing men's domination as part of 'normality' and expecting women to maintain their 'typical' submissive

behaviour, the dichotomy dividing private from public concerns also hindered institutions from taking action as to alleviate the injustices women suffered within many contexts of their daily lives. Society long believed that discrimination and violence only happened in the physical or sexual forms and that it hence concerned only family or intimate relations, which did not fall among the issues where the States could intervene. Due to the just enlisted factors, the consideration of this phenomenon as everyone's concern and as a major problem to be tackled by the international community emerged only in very recent times when compared to the institutionalization of other 'classes' of rights like civil and political ones. The result of multiple discrimination, historical structural inequality, the patriarchal system and the belief for exclusively negative States' obligations is the complex, multi-faceted phenomenon of 'Violence Against Women' (VAW). This 'endemic evil' (Ventura Franch, 2016:182) of our society is nowadays widely recognized as a major issue affecting not only women's individual lives throughout the world and in any contexts of their lives, but also as something having repercussions on States' socio-economic wellbeing in general. The recognition of the importance of this problem and the understanding of its diverse forms has not been an easy path nor has it been completely accomplished yet, even if ad-hoc Conventions condemning VAW and women discrimination nowadays exist in many areas of the world. The most important ones – which are also the main objects of the present dissertation – are the 1979 United Nations CEDAW Convention⁷ and the 2011 Council of Europe 'Istanbul Convention'¹³. These, together with the 1994 "Inter-American Convention on Prevention, Punishment and Eradication of Violence Against Women"¹⁴ and the 2003 "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa"¹⁵, constitute the milestones for the realization of the equality and non-discrimination principles, of even greater relevance when it comes to women's experiences. Ad-hoc Conventions on women's rights and the prohibition

¹⁴ Organization of American States (OAS), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem do Para"* (A-61). Adopted on June, 9th 1994.

¹⁵ African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)*; Adopted on July, 11th 2003.

of their discrimination were the last step of a long path for the introduction of their equality within globally accepted principles. Such path started with a major change in the conception of States' obligations towards individuals' lives – and hence women's – and the introduction and spread of the '*due diligence*' principle. The latter refers to Countries' obligation to protect all Human Rights, as well as prevent and punish any sort of violation, while the former indicates States' duty to intervene as to ensure individuals' enjoyment of rights (*positive* obligations). This last change – from negative to positive obligations – was possible thanks to a greater States' will to tackle the problem of gender discrimination and its consequences. What is most important for the interests of the present dissertation is that, through this evolution of States' perspective and the affirmation of due diligence, they started to conceive the intervention in family matters as to ensure punishment of Human Rights violations and the protection of vulnerable individuals as falling among their duties. This allowed the consideration of women's rights by international institutions and, later on, their formalisation within international Human Rights Treaties.

Prior to the adoption of the first ad-hoc international Treaty on women, the first step introducing their rights among the panorama of the international Human Rights matters was carried out through the *interpretation* of existing Human Rights Treaties by two United Nations bodies: the Human Rights Council and the Committee Against Torture. The former condemned many forms of violence, including honour crimes, stating that the phenomenon of VAW constituted a major threat to the right to life, since its ultimate consequence could be the death of the victim. It recognised VAW as a form of discrimination based on sex, which also disproportionately affected women because of its gender basis, and declared that the main existing discriminatory tools were to be found in laws, practices and rooted beliefs on 'proper' women's roles. The other path for the inclusion of VAW among international concerns has been its interpretation as a form of torture, carried out by the ad-hoc existing Committee (CAT). This body referred first to the cruel experiences women suffered in prisons, where torture was used by police officers to extort information from them, but also to other forms of torture affecting girls worldwide throughout their lives, like FGM and sexual

harassment (Edwards, 2011:216-262). By doing so, the Committee Against Torture took the first step in tearing down the public vs. private wall. The interpretative work carried out by the Human rights Council and the Committee Against Torture was for sure a crucial tool for the consideration of women's rights as Human Rights, and consequently for punishing their breaches as Human Rights violations. It anyway carried the risk of considering women's concerns as an 'exception to the standard', issue that may reinforce the patriarchal and gender concepts (Edwards, 2011:5). Interpretation of widely accepted Treaties went along with another important step within the context of the United Nations. In fact, on June 1946, a Resolution of the Economic and Social Council instituted the Commission on the Status of Women (CSW)¹⁶. This body was and is still tasked to submit to the ECOSOC reports and recommendations concerning the advancements of women's situation in the political, cultural and educational fields. The major achievement of the part started with Treaty interpretation was, doubtlessly, the 1979 Convention on the Elimination of All Forms of Violence Against Women (CEDAW)⁷, approved by the General Assembly during its 34th session. After its entering into force in 1981, the spectrum of punished actions and regulated situations was widened by the instrument of CEDAW Committee General Recommendations, together with the Optional Protocol¹⁷ to the Convention approved in 1999. Even if the importance of General Recommendations will be underlined in Chapter 2 of the present dissertation, it is deemed relevant to cite the most important ones issued by the CEDAW Committee throughout its history. First, No12 of 1989¹⁸, which encouraged Countries to include information about the implemented preventive measures against VAW in their periodic reports. A milestone in the work of the Committee is, without any doubt, General Recommendation No19 of 1992¹⁹. This document

¹⁶ UN Economic and Social Council, *ECOSOC Resolution 11(II)*, adopted on June 21st, 1946.

¹⁷ UN General Assembly, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 54th Session, October 15th 1999 (A/RES/54/4).

¹⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 12: Violence against women*, 8th session, 1989.

¹⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 11th session, 1992.

transformed the Convention into a gender-based one by recognizing the issue as both a form of discrimination and a violation of many fundamental Human Rights, which diverse consequences affected almost all the aspects of a survivor's life (Edwards, 2011:180-181; Ventura Franch, 2016:183). The 1992 Recommendation also condemned VAW within both the public and private spheres, understanding its strong link with the historical subordination of women to men as well as its multi-faceted feature (Edwards, 2011:181; Jantera-Jareborg & Tigroudjia, 2017: Chapter 1.2.4; McQuigg R. J., 2017:17-30). The evolution of this document came in 2017 with Recommendation No35²⁰, which among other things, reminded the causes and consequences of VAW and established the prohibition of gender-based violence as a customary principle of International Law (De Vido, 2017:4-5; Jones & Majoo, 2018: Chapter 3.3). The most recent Recommendation to be cited is No 25 of 2004²¹. It concerns the possibility for member-States to adopt 'temporary' special measures for a quicker achievement of substantive equality (Schiek., Bell, & Waddington, 2007:785). Another important issue has been the inclusion, within domestic member-States' laws, of provisions against direct and indirect discrimination regarding both the public and private spheres; as well, the document stressed the need for sensibilization measures to be designed and implemented as to contrast stereotypes and culturally rooted unequal roles of men and women (Vandenhole, 2005: Chapter 3.B.4). The aforementioned Optional Protocol, entered into force at the end of the 1990s through a General Assembly Resolution, gave a further boost to the relevance of CEDAW. In fact, it created two fundamental instruments for a better protection of women's rights. Individuals were since then allowed to submit their claims about alleged breaches of rights included in the Treaty; as well, it allowed the CEDAW Committee to carry out – given the Country consent – a confidential enquiry if it receives enough relevant information about persistent violations of the Convention rights

²⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No 35 on gender-based violence against women, updating general recommendation No.19*, 2017, CEDAW/C/GC/35.

²¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 30th session, 2004.

and provisions (UN Handbook 2017-18, 2017:280-281; Jones & Majoo, 2018: Chapter 3.3.1).

Relevant concepts and definitions

At the beginning of the present chapter, we have set out the main reasons and issues hindering the consideration and introduction of women's concerns and peculiar experiences within domestic and international debates and policies. Such an explanation showed how the main elements playing a role in the subordination of females both in their roles and public consideration, they all have been social constructions, beliefs and unfair impositions, unfortunately so ancient and deeply rooted in peoples' minds that their eradication is still a harsh task. We want here to recall the most important and controversial concepts deeply discussed earlier in the present chapter. First of all, the traditional oppositional perspective posing the two sexes at the opposite poles one to the other, the patriarchal society, concepts like 'gender' and 'stereotypes, the persistence of the public vs. private dichotomy and of negative States' obligations towards individuals' lives. Such impositions revealed to be controversial not only before the introduction and entering into force of the CEDAW Convention, but even after that, since the very acceptance and practical implementation of principles and concepts such as equality and non-discrimination have been and are still harsh in some socio-cultural context.

Talking about social constructions and the evolution of Human Rights Law towards the inclusion of gender equality, we have already given some important conceptualizations and definitions useful to fully understand the peculiarities of females' experiences and the impact of VAW on their lives. Nevertheless, some clarification is deemed important to be made on fundamental principles at work behind women's rights and as bedrock of the CEDAW, as well as the Istanbul Conventions. First, the same principles of 'non-discrimination' and 'equality' have to be explained, together with the differences between the various kinds of discrimination affecting women.

The principle of *non-discrimination* states that all individuals are entitled to the same rights and freedoms, without any kind of distinction, neither those based on sex. Formally, and conversely to the implications of the patriarchal society, this principle would imply that women are right-bearers in the same way as men do. The opposite of this principle is the concept of *discrimination*, which can anyway guide us in the path towards equality in a precise situation or relation – like the one between men and women. Nevertheless, it is impossible to realize relevant social change by relying only on one of the two principles, indeed needing both of them (Edwards, 2011:140-178).

Discrimination can be *intentional* or *non-intentional*, depending on whether it is done on purpose or if the discrimination happens as an unwanted effect. Moreover, we can have either *direct* or *indirect* discrimination, where the former implies a differential treatment as either directly linked to the association of an individual with a protected category or as a less favourable one compared to somebody else in similar circumstances. *Indirect discrimination*, on the other hand, refers to neutral measures having a discriminatory effect for different groups, which is not justifiable by objective reason; this is the case of institutional biases, where we can include those concerning women's inequality and the 'feminist paradox' (Vandenhoele, 2005:34-35). The latter, as explained in Edwards (2011:4), refers to the fact that the more women's concerns are raised and protected at the international level, the higher the risk that those same are reduced to essences, also limiting women's actual enjoyment of rights.

The second fundamental principle behind international women's rights, and also among the bedrock of the UN Universal Declaration of Human Rights, is *equality*. It is amongst the basis of liberal democracies, later absorbed by International Law; at the same time, it is quite a wide, abstract and wide concept. Even if the two principles are formally recognized as crucial ideals and principles under IHRL allowing full enjoyment of rights and a better Human Rights situation worldwide, their substantial implementation has always been controversial. This brings us to the difference between *formal* and *substantive* equality, which is even more real for women and other vulnerable groups. Formal refers to equality before law as it is affirmed within documents and declarations; on the other side, *substantive*

equality implies the actual realization of equal chances and duties among individuals, foreseeing social justice as the ultimate goal. Substantive equality is highly relevant when discussing about women's rights and the elimination of the multi-faceted discrimination. At this respect, it has been recognised – even if at a later stage as from previous paragraphs – that substantive equality among men and women can be achieved only through *positive States'* obligations and actions. The aims of the latter should be both ensuring individuals' practical enjoyment of their rights, as well as the punishment of any breach, whether this concerns one's public or family life. Substantive equality, in essence, refers to the practical existence of equal possibilities for everyone (Edwards, 2011:140-148).

The existence of substantive equality within one State implies its duty for positive actions, which contrasts a lot with the long-believed exclusive negative ones. As to reinforce the need and impact of positive obligations, the concept of *State's responsibility* revealed fundamental (McQuigg R. J., 2017:17-22).

The concept of State's responsibility has been established by UN Human Rights Treaty bodies and relies on the assumption about States as the main Human Rights violators. It is as well connected to the tripartite State's obligations to protect, promote and fulfil Human Rights (Leib, 2011:62-63). *State's responsibility* hence imply a degree of both negative and positive action, since the State has to ensure that Human Rights standards are maintained also in situations concerning individuals. The concept of State's responsibility can be invoked hence by individuals if they perceive that their State has failed in respecting their rights or the tripartite obligation; as well, a fellow Country or its citizens can internationally invoke this principle if the rights of those citizens have been violated by another State.

Other relevant and controversial issues have been already explained and discussed in previous section, underlining their causal relation with women's structural inequality. Among these, we have 'gender', that the CEDAW Convention defines as 'socio-cultural differences between men and women'. Such definition confirms how the hierarchy of sexes existent and persistent within and because of the patriarchal structure of society is reinforced by gender stereotypes,

and how these stereotypes and women's subordinated position have been part of customs, policies and even legislation. With the evolution of the Human Rights system and the widening of protected categories, it has been asserted how, due to multiple discrimination and to composite and gendered stereotypes, the best tool to set appropriate policies is the perspective of an entire woman's lifetime. This way, in fact, it is easier to analyse the links among various forms of discrimination, how they change throughout the different phases of a woman's life and the contexts she finds herself in and how they differently affect her chances, freedoms and enjoyment of rights (Jantera-Jareborg & Tigroudjia, 2017: Chapter 4.3.1).

Violence Against Women is a phenomenon arisen in international debates and legislation only since the late 1900s. Apart from the milestones cited earlier, some of its main features have been enlisted in the *1993 UN Declaration for the Elimination of Violence Against Women*²². It was recognized as a multi-sectorial issue based on women's structural inequality and on the domination of men over them. The discriminatory feature of VAW was asserted as well, when the Declaration stated that it was perpetrated by men against women for the mere fact of being one of them (Ventura Franch, 2016:191, 193-194). The concept of VAW have evolved since then, and one of the most important inclusions happened in 2003 with the *Optional Protocol to the African Charter on Human and People's Rights*¹⁵. Beforehand, Violence Against Women have included many sort of behaviours and forms, but not the economic, which was indeed cited and condemned in the 2003 Protocol. As consequence, also according to McQuigg (2017:33-35), the conception of VAW was enlarged in its multi-faceted nature, with this definition hence being applicable on a global scale.

There are some other aspects of this still widespread plague that are interesting to cite also for the aims and further developments of the present dissertation. First, VAW *hidden sides*, behind which we once more find traditions, beliefs and the public vs. private dichotomy. Traditionally, women were treated

²² UN General Assembly Resolution 48/104, *Declaration on the Elimination of Violence against Women*, adopted on December 20th 1993.

and expected to behave in a subordinated way towards men, and violence within familiar or intimate partner relationships was widely accepted for a long time. Family and the so-called ‘private sphere’ have also traditionally been the contexts where most of VAW forms happen, especially when referring to sexual, physical or psychological violence. At this respect, States have long been told not to intervene in these sorts of relationships since they were among the areas where they had (or were believed to have) only negative obligations, even in the case of abuses or Human Rights violations. Consequently, VAW actual *multidimensionality* both of its most brutal forms and consequences remained unknown to society and was not tackled by States, up to the rise and spread of the due diligence principle (Jantera-Jareborg & Tigroudjia, 2017: Chapter 4.3.1; Ventura Franch, 2016:182,191). Another aspect which is highly relevant for the present political and humanitarian situation – here referring to mass migrations from African States devastated by civil wars – is the *mobility* of VAW. This aspect refers to the possibility that both perpetrators and victims move from one State to another throughout time. This can become problematic for migrant women, which are more vulnerable and exposed to repeated violence and often cannot reach out to support services. As well, mass migrations and unstable political situations can lead to perpetrators’ impunity. Mobility of victims and perpetrators have been tackled by some provisions of the Istanbul Convention, where the Council of Europe pushed for international cooperation, the enforcement of cross-border protection orders and international exchange of information on each State’s risk of violence (Jantera-Jareborg & Tigroudjia, 2017: Chapter 13.2).

A concept that has been long misunderstood or marginalised is ‘*Domestic Violence*’ (DV). It is nowadays recognized as a specific set of issues affecting an even wider range of individuals, and it is quite strictly linked to the familiar context. This concept has been regarded with greater attention by the Istanbul Convention, which main points will be set out later on. We can anticipate anyway how the Domestic Violence phenomenon does not concern only women, even if they are still the most affected for the socio-cultural reasons we recalled many times; instead, it can be perpetrated *by* women towards men and elderly people,

having severe consequences even on what are defined as ‘indirect victims’ (witnesses).

1.2. CEDAW as the ‘Bill of Rights of Women’

Core concepts and challenges

The CEDAW Convention is largely recognized as fundamental for the future and current developments on legislation protecting women’s rights, promoting their equality in all fields and prosecuting their perpetrators. Why is this international Treaty so fundamental? What are the main concepts, wishes and goals behind its conception and publication? What are the controversies attached to its presence and implementation?

This 1979 Convention is considered as the ‘Bill of Rights of Women’ for many reasons. First, it constituted a fundamental change at the international level, since it included women’s specific needs and experiences among the matters protected by International Law; as well, it established the obligation for ratifying States to include Treaty enforcement provision in their domestic laws and policies. By doing so, the CEDAW Convention represented a watershed in the perception and prosecution of violence perpetrated against females (McQuigg R. J., 2017:22-31).

The main objective of the 1979 Convention is the achievement of substantive equality for women, as well as the non-discrimination principle, in the public as well as in the private sphere. As hinted by some scholars, such a bold aim required a huge socio-cultural change, with the deconstruction of the patriarchal society – which had to be overcome – and the attached stereotypes. As to eliminate discrimination and effectively get to substantive equality, the provisions of the Convention pushed States towards the construction of different policies as to act against inequalities suffered by women in almost any field of their lives. The set of measures suggested and indicated by the Articles can be conceptualised with the tripartite States’ obligation to protect, promote and fulfil Human Rights, which

can be seen as a sort of renewed version of the positive vs. negative scheme. States were demanded, among others, to eliminate all the existing laws and practices having both direct and indirect discriminatory effects on women, as well as those based on stereotyped beliefs on their role; besides this requirement, they were encouraged to protect women even in the case of ‘merely’ alleged violations of their rights. The State responsibility issue arose in the CEDAW, where Countries were made accountable not only for the breaches committed by their officials, but also for those coming from non-State actors and individuals. An important tool put at Countries’ disposal as for them to more quickly realize de fact equality between women and men is the possibility to adopt ‘Temporary Special Measures’. Explained at Article 4 of the CEDAW Convention, these measures are not to be intended as discriminating the rest of individuals, and have to be dismissed as soon as substantive equality has been achieved (Schiek, Bell, & Waddington, 2007:340; Jantera-Jareborg & Tigroudjia, 2017: Chapter 2.A; Vandenhole, 2005: Chapter 4.B.4).

The Convention also gave member-States some tools and indication for women empowerment and for the deconstruction of stereotypes norms and roles within the current society. These tools included the need to find, tackle and eliminate all the gender stereotypes at work in the different fields, including economics, politics, education, as well as issues such as hiring and maternity rights. In these, like in private issues, women were to be protected against abuses and unfair treatments based on old-fashioned, untrue beliefs. As to change the socio-cultural basis of the current and future society, the Convention provisions saw and recognized the crucial role of awareness-raising and the education of youths. As to promote gender equality and boost the presence and role of women in fields and jobs ‘typically’ seen as more ‘suitable’ to men, it required Countries to plan awareness-raising public campaigns regarding all the sections of society, as well as a huge change in educational material. The latter was conceived for the elimination of clichés and beliefs on unequal possibilities and roles of women compared to men, as well as to promote the worthiness and positive social impact of gender equality (Factsheet No. 22, 1995:18-21; Jantera-Jareborg & Tigroudjia,

2017: Chapter 10.2; Jones & Majoo, 2018; Schiek., Mark Bell, & Waddington, 2007:760; Vandenhole, 2005:240-271).

The CEDAW Convention has been recognized as among the most effective of Human Rights Treaties at the time of its entering into force; unfortunately, this Treaty had often had its major effects where least needed, like well-established democracies or Countries where Human Rights are widely recognized and implemented. At the same time, this Convention and its effectiveness come with two major controversies. On the one side, it has been found that the CEDAW Treaty received a considerable amount of Reservations, and quite often on its core Articles. The reservation issue is quite related to the phenomenon known as 'decoupling', which indicates the differentiation between the formal ratification of a Human Rights Treaty by a Government and the implementation of its provisions. Why and where does this happen most? In most cases, decoupling and Reservations on crucial Articles on women's protection have come both from those Muslim (or developing Countries) where the concept of gender equality is still not accepted. These Countries have often posed their Reservations on Articles and provisions pushing Governments towards action for women's empowerment and protection by basing their objections on cultural or religious norms and rooted beliefs that clashed with what was required by the Convention itself. The phenomenon of decoupling, instead, can be frequently detected in those areas or Countries where non-democratic Governments want to get the benefits of international Human Rights commitment, but domestically continue with discriminating, cruel behaviours and policies hindering the realization of those same rights they have formally recognized (Cole, 2012:1156-1158; Creamer & Simmons, 2018:39-40; WHO - Department of Gender, 2007: Chapter 2.5,3).

The Structure and functions of the CEDAW Committee

The 1979 CEDAW Convention envisaged an entity responsible for checking over the respect and the improvement of its implementation in member-States: the CEDAW Committee. This monitoring body was created in 1982, but

the crucial feature is its composition; in fact, the 23 members are experts of International Human Rights Law, representing the different cultures, legal systems and geographical areas. As foreseen by Article 17 of the Convention, even if they are elected by member-States, they do not act on behalf of those, but on their own personal capacity; they are, hence, independent impartial experts assessing the implementation of the Convention without specific political interests (UN Handbook 2017-18, 2017:251-253, 180-281; WHO - Department of Gender, 2007: Chapter 3).

The evolution of the CEDAW Committee role, responsibilities and ad-hoc instruments has been possible thanks to the General Recommendations, already discussed in the previous section. These are documents issued by the Committee on specific provisions of the CEDAW Convention and have a normative function as by Article 21. They have served for UN consideration of women's peculiarities ad rights and for the acknowledgment of Human Rights intersectionality.

The work of the Committee is a 'consequence' of a State ratification of the CEDAW Convention by a member-State, ratification which symbolizes the beginning of both Government duties and of the whole monitoring procedure. The Treaty body is now designed with a threefold mandate: review the first national report within one year from ratification and the following ones every four years; make Recommendations on the issues affecting women to which member-States should pay greater attention to; receive and consider individual and group complaints about alleged violation of the rights within the Committee mandate, as by the 1999 Optional Protocol.

Its main tasks are linked to the consideration of member-States periodic reports on the measures and progress concerning the implementation of the Convention. Reporting constitutes an obligation for States, as foreseen by Article 18 of the Convention (UN Handbook 2017-18, 2017:280-281). The work of the CEDAW Committee has been defined a consequence of ratification because it starts in the immediate aftermaths. When no reservation has been made, the State has to submit a first report to the Treaty body within one year, report that will be the starting point of the dialogue, as well as the basis for the assessment further

improvements in women's rights and equality. The monitoring procedures, the actors involved and the controversies and problems attached to it will be among the main interests of Chapter 2 of the present dissertation.

1.3. The Council of Europe 'Istanbul Convention': Openness and the '3Ps'

In the present section, the attention will shift to the latest, most comprehensive international Human Rights Treaty on women's rights, VAW and Domestic Violence: the "Council of Europe Convention on preventing and combating Violence Against Women and Domestic Violence" – also known as the 'Istanbul Convention'²³, which entered into force in 2014. This document contains some crucial definitions and is based on a revolutionary holistic approach for the prevention and fight of both Domestic Violence and Violence Against Women, approach based on the three pillars of Prevention, Protection and Prosecution.

The prevention and fight against VAW and DV, together with women empowerment, have always been among the main priorities and concerns of European institutions, which undertook great efforts in establishing binding norms and long-term measure for the protection of victims of these social plagues (Benoit-Rohmer, 2016:55-56). A document that is worth citing as part of the background to the Istanbul Convention is the Committee of Ministers 2002 Recommendation No5²³. It first included the family among the dimensions of violence, increased the penalties for perpetrators, as well as posed the basis for the '3Ps' holistic approach by including concepts such as due diligence obligations and condemned all forms of violence happening within the household and family relations (De Vido, 2016:79; McQuigg R. J., 2017:40-42). Nevertheless, in the legal framework priori to the adoption of the Istanbul Convention, some criticalities were still detected in the fight against VAW within the public and family contexts. This is one of the reasons why, when drafting the Treaty, greater attention was posed on *prevention* as a fundamental tool both for socio-cultural change and, as consequence, for an effective fight of gender-based discrimination,

²³ Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002.

VAW and DV (Bocaniala, 2015:701-702; Degani, 2012:51-61). In the same year the Convention entered into force, a survey conducted by the European Agency of Fundamental Rights came with an alarming outcome, by signalling that 33% of women throughout European Countries have experienced some form of sexual and/or physical violence since the age of 15. Reality, by the way, was and is still believed to be even worse due to low reporting rates.

The Istanbul Convention draws its inspiration from three important international documents. First, the CEDAW Committee GR19/1992¹⁹, which recognized gender-based violence as a form of discrimination. The 1994 'Belém do Pará' Convention¹⁴, which declared VAW as a HR violation and as any physical sexual or psychological violence occurring in the family or in any other interpersonal relationship. Last, but not less relevant, the 2003 Protocol to the African Charter¹⁵, where the link between the elimination of VAW and women advancement is made explicit. Another fundamental source for the drafting and for the same provisions of the Istanbul Convention is the jurisprudence developed by the European Court of Human Rights as concerns the conception of Domestic Violence as a specific phenomenon and that of the Inter-American Court of Human Rights for the inclusion of States' due diligence obligations within the European Treaty. The Istanbul Convention, although backed by such fundamental International Human Rights Law documents, goes even further by establishing legally binding obligations on Countries, where VAW is defined both as a HR violation and as a form of discrimination (De Vido, 2014:376-378; De Vido, 2016:82,84; McQuigg R. J., 2012:371-374; Organization of American States and Council of Europe, 2014:89,92-93).

The Istanbul Convention is considered by many experts and scholars as the most advanced, wide, and comprehensive international instrument addressing social plagues like Domestic Violence and Violence Against Women. It is also considered as crucial development for an effective response to such complex phenomena, as well as for their institutionalization in the international agenda. Most importantly, the 2014 European Treaty is the first binding instrument

dealing with the two multi-faceted issues, emphasizing among others the peculiarity of Domestic Violence as a single and distinguished phenomenon.

Core Concepts

Earlier in the present Chapter, we have hinted at the major relevance of the Istanbul Convention within the panorama of International Human Rights Treaties, as well as for those concerning peculiar issues like women's rights. Apart and through its threefold approach, the Convention aims at achieving three great objectives: break the traditional disparities by investing in gender equality, with shared rights and responsibilities between women and men in all fields. Thus, it wants to realize a huge mental and social change in men, boys and society in general, calling for zero-tolerance and for the elimination of all the prejudices and stereotypes justifying discrimination and violence against women in all their forms and contexts (Jones & Majoo, 2018: Chapter 5; Organization of American States and Council of Europe, 2014:92).

There are some fundamental concepts and definitions to be outlined as to fully understand how and why this Convention is considered as milestone for future and further protection of women and how has it become a worldwide reference.

First of all, a definition which differentiates the perspective of this Convention from those of previous documents is the one given to '*gender*'. It is defined as a 'social construct' and it is conceived as applicable too both men and women. In this sense, the Convention resulted to have a gender-neutral approach to Domestic Violence, which is separated from VAW in general and can also affect men and children (Jones & Majoo, 2018). Another important and comprehensive definition given within the Istanbul Convention is the '*Violence Against Women*' one. It is conceived as a Human Rights violation and form of discrimination against women consisting in all acts of gender-based violence resulting in physical, sexual, psychological or economic harms or threats, happening both in the public or private spheres (De Vido, 2016:79; Jantera-Jareborg & Tigroudjia, 2017: Chapter 13.2).

Gender and VAW are linked in the perspective of this Treaty, with the latter having a gendered nature. In fact, as it is well known, most of VAW forms affect women for the mere fact of being so (gender-based). The socially constructed roots of the roles imposed over them are, hence, among the main reasons why the culture of tolerance towards discrimination and violence still persists.

Domestic Violence, specifically addressed by the Convention, is treated as linked but also independent from VAW. It is recognized as mostly affecting women because of gender issues, but member-States are also encouraged to apply the provisions within the Treaty to all the victims of Domestic Violence (McQuigg R. J., 2012:375-378).

Let's now consider the *Due Diligence Obligations* and the related *States' responsibility* concepts foreseen by the Istanbul Convention. First of all, DDOs nowadays imply both negative action – refrain from hindering Human Rights enjoyment – and positive one – gradual realization of a right or fair conduct - (De Vido, 2014:373-377). At the same time, DDOs are conceived as double-faced. On the one hand, they prohibit States from committing violent actions and expects their authorities to act accordingly. These obligations establish at the same time the duty for Countries to prevent, protect, investigate and punish any violent action, with Governments being held responsible (concept of *States' responsibility*) both for breaches perpetrated by their authorities and officials, but also by non-State actors and individuals (De Vido, 2014; De Vido, 2016:82-83; McQuigg R. J., 2012:371-374).

The Istanbul Convention asserts the universal character of plagues like gender-based discrimination, VAW and DV, as well as their transnational feature. Thus, it is aware that one action, one Government or one set of policies are not enough to change the situation and realize women empowerment, nor is one Treaty. It hence establishes, as one of the most important tools to effectively eradicate stereotypes and the culture of tolerance, an *inter-agency approach*; at this respect, it pushes for greater cooperation in two senses. On the one hand, it encourages Governments to involve non-State actors, national groups and NGOs concerned with gender issues and women's rights in the application of the Treaty at the

domestic level. On the other hand, it also encourages States to cooperate with each other as to create an efficient system of protection and prosecution. Among others, the Convention foresees the establishment of cross-border protection orders, aimed at an effective transnational protection of victims or vulnerable individuals.

Openness and the '3Ps'

Even if it is the most recent international Treaty on women's rights and DV published, it has already become a valuable reference all over the world, used even by Human Rights Courts in other continents (America first of all). One of its major features, which has allowed the Convention to arise in the international panorama, is its *openness*. Since both VAW and Domestic Violence are worldwide concerns, the Convention is opened to accession by any Country in the world wishing to address those forms of violence and discrimination included in the text, whether or not it is party to the Council of Europe. Such openness is a great advantage and a way in which the Convention can become (and is becoming) a global reference, used by Human Rights Courts of other continents (Council of Europe, 2014; De Vido, 2016:85-86; Organization of American States and Council of Europe, 2014:90-91). Such an opened character of this Treaty is a call to action towards a wide set of agents: States, non-State entities and Parliaments, where the latter are called to constantly review current legislation as to get in line with the Convention provisions and the suggestions from the established monitoring body. As well, such openness sees a greater participation of non-State actors, Human Rights groups and NGOs as crucial to effectively address and eliminate VAW and DV (Organization of American States and Council of Europe, 2014).

Reference has been already made, at the beginning of the present chapter, to the revolutionary character of the approach designed within the Istanbul Convention, approach based on three key words: *Prevent, Protect, Prosecute*. Generally speaking, the Convention requires all member-States to take all the legislative and other measures to effectively implement the obligations enshrined within its Articles.

Prevention mainly refers to the social change needed to eradicate VAW, structural inequalities, multiple discrimination and gender-based one. The first requirement imposed by the Convention upon member-States is the elimination of all those laws and practices having a discriminatory effect on women and girls. As well, the Treaty pushes towards a change in educational materials, where those are expected to exclude all those clichés and stereotypes based on women inferiority and stereotype roles; this way, the Convention believes that boys will understand the value of gender equality and grow up following such principle. As well, awareness-raising is deemed crucial as to make the whole society understand why gender-based discrimination and culturally rooted beliefs have to be overcome, as well as for a proper understanding of the origins, causes and brutal consequences the different forms of VAW and discrimination within both the public and private spheres have on women and girls (Bocaniala, 2015; Organization of American States and Council of Europe, 2014). As for the actual prevention of violence, the Convention requires member-State to train ad-hoc professional able to properly deal with the different kinds of consequences and situations they may face when meeting women survivors, as to adequately help them and – eventually – children witnesses in their recovery and protection (McQuigg R. J., 2012:367-381).

Protection measures foreseen by the Convention in its Chapter IV are directed to both direct and indirect victims. Their main aims are ensuring victims' safety, full recovery, as well as their independence and integration after the trauma. Thus, protection measures include, among others, the presence of hotlines and shelters, the provision of different forms of counselling – like medical advice, psychological and legal support – and the presence and enforcement of restrictive protection orders to avoid repeated offences. The achievement of survivors' economic independence is deemed relevant as well, for which Governments are expected to help them training and finding an employment. The concerns of the Convention include also the well-being of indirect vulnerable victims; at this respect, it foresees the presence of support services and counselling specific for the consequences violent events can have on children witnesses (Organization of American States and Council of Europe, 2014:89, 92-93).

Prosecution regards the tools available to authorities and law-enforcement personnel as to avoid repeated violence and ensure an adequate and effective punishment of violent individuals. Countries, as by the Convention provisions, must put their legislation in line with how the Treaty criminalizes the different forms of VAW and DV. Authorities and law-enforcement personnel shall respond to any criminalized act of violence in a quick and appropriate manner; at this respect, all forms violence happening within the family and the presence of children witnesses are considered as aggravating circumstance and imply increased penalties. Investigations must continue even in case of withdrawal by the victim, who has to be informed of the various steps of the proceeding.. Perpetrators shall be caught and prosecuted for their actions, without admitting culture, religion or ‘honour’ as justifications. Authorities shall have access to the victim’s house as to arrest the perpetrator, also ensuring his presence before the judge. Punishment for perpetrators shall be proportionate, effective and dissuasive. Reparation shall be provided by the State to survivors if not other means are accessible or plausible (De Vido, 2014; McQuigg R. J., 2012; McQuigg R. J., 2017: Chapter 3; Organization of American States and Council of Europe, 2014:89, 93).

We have suggested earlier in this Chapter, how the Council of Europe put greater emphasis on *Prevention* measures within the Istanbul Convention. This is due to the difficulties detected, even after the entering into force and great adherence to the CEDAW Convention and of other relevant documents, in the eradication of the culture of tolerance, traditional discriminatory beliefs about women and their unequal roles and in the affirmation of their rights as worthy, equal and part of Human Rights. The socio-cultural change, so hard to achieve for strong cultural resistances, is deemed crucial for an effective fight against gender-based violence and for the achievement of substantive equality among individuals. As well, as to ensure the actual implementation of its ‘3Ps’ approach and of all the suggested or required measures, the Convention encourages both internal and international cooperation, not only among member-States, but also with all those non-State actors concerned with the respect for Human (and women’s) Rights

(Jantera-Jareborg & Tigroudjia, 2017: Chapter 13.2; Organization of American States and Council of Europe, 2014).

The Jurisprudence of the European Court of Human Rights and the Istanbul Convention Conception of 'Domestic Violence'

It is desire now to focus the attention on the conception and specificity the Istanbul Convention assigns to the phenomenon of “Domestic Violence”, since it differs a lot from the perspective of any previous international or regional document and has become source of intense debates. It is deemed relevant as well to understand the role played by the European Court of Human Rights in outlining the main features of the Istanbul Convention point of view on Domestic Violence.

The Istanbul Convention conceives Domestic Violence as one of many manifestations of gender-based violence and as falling among VAW forms, but it is also something separated from both of them. Thanks to the work and evolution in the jurisprudence of the European Court of Human Rights first of all, the phenomenon of Domestic Violence is now considered a breach of many Human Rights, like the right to life, to a private and family life, as well as a breach to the prohibition of torture and other inhuman or degrading treatments. Former treaties based their perspective on the belief that the perpetrator was someone of the dominant group (sex) and with a dominating position. Hence, they did not supposed the possibility for Domestic Violence to be perpetrated *towards* men. Conversely, thanks to the work of the Court and consequent to the Convention conception of ‘gender’ as applicable to both men and women, the Treaty contrasts the point of view of earlier documents by admitting men as potential victims of violence within the familiar context. The definition the Convention gives of ‘Domestic Violence’ is also important since it considers irrelevant both the current relationship between victim and perpetrator and whether they share or not the same residence a the time violence is perpetrated.

How did we get to such a different, wider but debated conceptualization of “Domestic Violence” in the 2014 Treaty? Among its main sources and references, there is for sure – as hinted – the jurisprudence of the European Court of Human

Rights (ECtHR). This institution did not properly address the issues of DV and VAW before 2007 and 2009, but it has referred to and has been frequently referred by the Inter-American Court of Human Rights. On the other hand, as for its reasonings, it has based them first and foremost on the UN CEDAW¹ and the ‘Belém do Pará’ Conventions¹⁴, since they were the latest dealing with these two social plagues. The fact that two regional Human Rights Courts referred to one another when dealing with DV and VAW cases symbolizes the universal relevance and dimensions of these phenomena. At the same time, it must be reminded how the European Court represents a one-of-a-kind in the international panorama; in fact, while on the one hand it is the only able to effectively monitor member-States’ behaviour, it is also the only to which DV and VAW victims can submit their cases to and the only establishing – later on – a lack of fight against DV as a breach both to Human Rights in general, but also to women’s rights. The game-changing role of the European Court resides in some further aspects. First, it contrasted the traditional blind eye turned towards family violence by encouraging States to act as to eliminate the rooted culture of tolerance and eradicate the discriminating stereotypes on women’s roles. This way, it also contrasted the traditional exclusion of the Domestic Violence issue from States’ interests and actions and the lower subsequent awareness on its existence, features and consequences. Just like gender-based violence and VAW in general, also Domestic Violence has been long perceived as perpetrated through its physical and sexual forms, with these being the only real major threats to individuals’ lives. The Court focused instead on the danger represented by *economic* and *psychological* forms of violence, underlining how even the threats of the latter or of repercussions could have deadly consequences. In fact, psychological violence, where insults and threats are included, have severe risks of lowering one’s self-esteem and can even lead to depression or suicidal thoughts. As concerns *economic violence*, the Court established that this include restrictions on the access to economic resources, the obligation to give account of one’s expenditures to the partner or coercion to work or to stay at home. In any of its forms, *economic* violence aims at creating a relation of dependence within the couple, which lowers individuals’ freedoms and – eventually – perception of the ability to provide for

their own needs. As hinted earlier, the forms of violence traditionally perceived as most dangerous have been the physical and sexual ones, also due to the evidence they leave on the victims' bodies. The Court, on the other side, specified how subtle economic and psychological abuses are, since they cannot be detected through physical signs but works and deteriorates the mind and psychological well-being of an individual. Considering how gender-based, discriminating beliefs and society always considered women as lower and imposed such perspective upon them, it is easy to understand that they are most times more vulnerable than men; consequently, women can also be the most exposed to psychological threats and economic restrictions imposed by men, which consequences can be more severe due to their greater vulnerability. These are the main reasons why the Court came to include these long-absent shades of VAW and DV among the criminalized ones, criminalization which has been later reflected within the Istanbul Convention.

What are the complicated aspects of this wider conception of Domestic Violence and why has it lead to great debates? What are the advantages of it? The first point that has given rise to controversies and debates is that, by dividing DV from VAW in general, the Convention risks implying that the former does not have connections to the structural issues of the latter. Another controversial point has been the widening of potential victims with the inclusion of men and boys. Such an inclusion is the outcome of a greater awareness on the peculiarities of Domestic Violence – intended as violence happening within the family – and is revolutionary since it breaks the taboo of males as untouched by violence and as invulnerable individuals.

At the same time, by considering Domestic Violence as a differentiated phenomenon, the Treaty has put emphasis on its specificity and on that of its victims and related consequences. States are encouraged, as by the Convention provisions, to apply the Convention to *all* victims, always keeping a special eye upon women victims as the most affected individuals (Benoit-Rohmer, 2016:61; De Vido, 2014:368-369; De Vido, 2016:80; McQuigg R. J., 2012:370; McQuigg R. J., 2017: Chapters 4, 6; Ventura Franch, 2016).

Since Domestic Violence shares some similarities with VAW mainly based on gender and on the effects concerning all fields of a victim-survivor's life also in the aftermaths of the trauma, it is now considered as dangerous as VAW, with States required to give it equal attention. The '3Ps' approach has to be applied to DV just like it is to VAW, but protection and support here concerns a wider range of individuals: direct and *indirect* victims, with the former potentially including men and boys and the latter including children and the elderly. Concerning States' due diligence obligations, the work of the Court established that if authorities fail to act or underestimate the danger of a given situation of Domestic Violence just because the claim has been made by a woman, this represents sex-based discrimination. As well, once they are aware of violent acts taking place within a specific familiar context, authorities are obliged to inform the potential complainer about available tools and protective measures even if he or she has not reported yet. Just like the provisions established for VAW, authorities' response has to be quick and adequate also in cases of Domestic Violence, avoiding unjustified delays in protection of survivors and prosecution of perpetrators (Benoit-Rohmer, 2016:68-69). Promptness of law-enforcement reaction and the equal consideration of women's reports to those coming from men and other individuals not only would boost women empowerment, but it also increase the respect for their rights within a Country and public confidence in justice and the law enforcement system.

CHAPTER 2:
MONITORING PROCEDURES: The UN CEDAW CONVENTION and the
Council of Europe ‘ISTANBUL CONVENTION’

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In the present section, the monitoring procedure established by the 1979 UN CEDAW Convention will be examined in-depth, also taking into account the role and relevance of actors different from States and the challenges the Committee has to face when it comes to its effectiveness.

Before proceeding, I consider important to specify and recall the general aims of the UN reporting systems on Human Rights, as well as some elements of the CEDAW Committee and the related duties for member-States.

Generally speaking, in the UN Human Rights reporting system, the supervision of States respect for their Human Rights obligations as foreseen by the different Treaties is mainly delegated to Committees of independent experts; member-States also have the obligation to submit to those entities periodic reports on the measures and changes implemented at domestic level to implement Treaty provisions. These reports are anyway conceived as including, apart from information on the improvements and positive changes, also information on the obstacles and difficulties encountered by Governments in respecting Treaty requirements. Moreover, for many UN HR Treaties, there is the possibility for individuals to raise their own concern about supposed violations of rights falling within the scope of the different Conventions, possibility also foreseen for breaches of women's rights as by the 1999 Optional Protocol to the CEDAW Convention (Bilder, et al., 1994: Chapter 1-2).

Focusing on the latter, it is necessary to remind how the Convention establishes the monitoring mechanism at Article 18. The main body responsible for assessing the degree of Convention implementation by member-States is the CEDAW Committee, constituted by 23 independent experts acting on their personal capacity. The mechanism relies on States' self-monitoring, with the obligation for them to submit to the Committee a detailed report on implementation and related difficulties every four years (apart from the first one to be submitted within one year from ratification). This kind of basis, with self-assessment and periodic reporting to an independent entity, is conceived as building cumulative improvements and a constructive dialogue between States and the entity itself.

The CEDAW Committee has been built as an entity verifying the application of gender equality laws and evaluating the effectiveness of the Convention on States' policies and legislation. As hinted earlier, the CEDAW Convention saw an evolution of the Committee's tasks through the 1999 Optional Protocol, which established both the chance for individuals to raise own concerns on rights violations as falling within the CEDAW scope and the Special Enquiry Procedure for an effective intervention of the Committee in case of serious ongoing violations by member-States. The first procedure was designed as accessible, affordable and effective, being an important instrument for the realization of equality; the second tool aimed at stopping or preventing serious violations by member-States from continuing or rising. From 1979 onwards, and even more from the adoption of the Optional protocol, ratification and adherence to the CEDAW Convention and related documents experienced an important increase, together with the establishment of new responsibilities on the side of the CEDAW Committee and the related greater workload. As to improve the efficiency of its work and allow a proper consideration of the different documents and situations, the Committee was allowed greater meeting time. What is most relevant is that the broader mandate of the Committee made it more authoritative in its decisions and Convention interpretation, which made the latter to become a global instrument for gender equality, women empowerment and non-discrimination (Vandenhoele, 2005: Chapter 4.B.4; United Nations, 2017:280-281; Englehart&Miller, 2014:23-27; Simonovic, 2014:596-598).

The procedure established by the CEDAW Convention and carried out by the Committee also foresees the involvement of relevant non-State actors, like NGOs, CSOs, UN Agencies and NHRIs, to whom the entity ask for 'shadow reports' as to complement and confront them with the information given by States. The reporting obligation for the latter is related to the legislative, judicial and other kind of measures undertaken as to implement the Convention. Since it is an obligation, but it also came out as a complex and time-consuming task, the Committee recently issued some general guidelines to help member-States in their duties, but these guidelines are still deemed as too general (Factsheet No. 22, 1995:18-21).

2.1. The CEDAW Monitoring Procedure

Submission of Country Report

The monitoring procedure on the CEDAW Committee starts as soon as a Country ratifies the Convention without reservation on the supervision mechanism; in fact, as hinted in the introduction to this Chapter, each State is obliged to *submit* an initial *report* to the Committee within one year from ratification. The importance of this initial report lays in that it constitutes the starting point of the dialogue State-Committee and the basis on which the Treaty body will evaluate further developments and the degree of compliance with Treaty provisions. Apart from that, the initial report gives the Committee an overview on the situation of women within that specific Country and of the obstacles towards their enjoyment of rights and substantive equality. After the first evaluation, Countries have the duty to submit reports every 4 years; these must contain information and data both on the legislative, judicial and other measures for Treaty implementation, as well as on the related difficulties. As to help Countries with their obligations, guidelines have been made available for both the first and the subsequent reports. The first, as hinted, must be a detailed account on women's position; *periodic reports*, on the other side, must be based each time on the previous one and related Recommendations by the Committee, exposing the progress as well as the difficulties encountered as to comply with its suggestions. Information within periodic reports must be gathered from the different competent authorities and forces, with gender-disaggregated data for each Article (World Health Organization, 2007:11-15).

On the side of the State, the preparation of periodic reports carries many controversies, beliefs and wrong perceptions, which often hinder the possibility for actual great improvements at both the domestic and the international level. Among the main obstacles to an effective monitoring and real improvements on the long run, we have the fear of negative repercussions if Government lacks are made public, which can be contrasted by the voluntary act of ratifying and committing to a Human Rights Treaty provisions. Among the main consequences

of a wide Human Rights panorama is that by ratifying different Treaties with related monitoring procedures, States fall into what is known as ‘minoring fatigue’ – to which we have hinted at different points of this dissertation. Overlapping deadlines and reporting obligations constitutes a great problem especially for poor Countries, which do not have the same development as Western ones in terms of infrastructures and IT. Monitoring fatigue often leads Government to elaborate undetailed, superficial or overdue reports, which consequences affect not only a precise section of society, but the latter as a whole as well as the overall international Human Rights situation. This is also the case of a serious violation by insincere ratifies or due to a law breakdown, since a Human Rights problem of a specific Country ends up affecting the whole international community (Bernard & Wille, 1997). The problems and controversies related to reporting will be anyway investigated in depth in the third Chapter of this dissertation.

Pre-Sessional Review

The second step is the *Pre-Sessional Review*. The monitoring mechanism to the CEDAW Convention is constituted, apart from the Committee itself, also by the pre-sessional Working Groups – on organizational aspects and for General Recommendations based on Articles and on Convention implementation -. The Pre-sessional review implies the consideration of the State report and the preparation of a list of issues and clarifications to be sent in advance to the Country, which can this way provide the required additional information during the consideration meeting (World Health Organization, 2007:11-15). The pre-sessional working group meets before the Committee, also inviting competent agencies and entities to provide their reports and participate to the Consideration session. The relevant documents issued by the pre-sessional working group are to be provided to the Committee within four weeks before consideration, with the Secretariat ensuring their reception. As well, the Secretariat has to prepare a document concerning the possible improvements of the Committee work, based on previous experience and/or recent developments of the HR regime, including

as well a list of potential Countries to be considered the following year (Ilic & Corty, 1997:359-360).

Report Consideration and its Outcomes

The *consideration* of States' report by the Committee takes place in a public *meeting* 2-3 times per year. In this occasion, reports are discussed between members of the Committee and high-level States' officials, with the aim of building and continuing the constructive dialogue between them. The CEDAW Committee members raise their concerns on the basis of documents prepared by the pre-sessional working groups, together with State reports and the shadow reports coming from the third parties, which are invited to participate at the session. The latter begins with a short Introduction by a representative of the considered Country, followed by a series of Questions and Answers between the Committee and representatives, where the former can ask for either clarifications on the content of the report or additional information about a specific concern. Responses by the State can be given on the spot or in written form some days after the meeting, with the unanswered ones to be dealt with in the following account.

Implementation of Comments

The *outcomes* of this session are the *Concluding Comments* by members of the Committee, issued in the light of the discussion and usually having the following structure: introduction and acknowledgment of Country's positive steps; outline of the main areas of concerns by the Committee and related Recommendations; request for greater dissemination of Comments as for relevant NGOs to be aware of both the undertaken and the needed steps. Concluding Comments started to be issued in 1994 and, among other features, they have to be exhaustive. These Concluding Comments and the General Recommendations are then incorporated in the Committee report, which is sent to both the considered Country and the other actors concerned with women's rights. Moreover, these comments are published on the webpages of both the UN Division for the

Advancement of Women and of the UN OHCHR. The Government is then asked to report back on the accomplished steps in the upcoming monitoring cycle (Ilic & Corty, 1997:363; World Health Organization, 2007:11-12).

State Periodic Reports

Follow-up is a crucial point for the effectiveness of the monitoring procedure, as well as to give national actors the chance to participate in the implementation of Committee Recommendations; on the side of member-States, follow up is a chance for the needed resources to be provided by competent Government authorities, in cooperation with NGOs. As for implementation to be effective, in fact, the involvement of all responsible sectors of society and of Governments is needed, with civil society aware of the Treaty and related rights. The follow-up requires Countries to review CEDAW Considerations and take all the needed steps to implement the suggested measures and improvements, to be then referred to in the following State report (Ilic & Corty, 1997:364-365; World Health Organization, 2007:11-12).

General Recommendations

The mandate of the CEDAW Committee foresees two main tasks; on the one side, the consideration of States' reports and their confrontation with those by third parties; on the other, we have the elaboration of suggestions through General Recommendations. These are Committee official statements on the meaning of Treaty obligations and are addressed to member-States as aid in their implementation of the Convention. Generally speaking, they provide Countries with guidance either on the procedure (explanation of the steps) or on more practical issues (reporting duties and content of account). The most important General Recommendations issued by the Committee, and even more from 1992 onwards, served to clarify the core features of the intersectionality of women's right to non-discrimination and equality and the needed measures Countries were called to take to achieve substantive equality. General Recommendation No 19

of 1992¹⁹ is a milestone in the development of the Committee decisions and approach to women discrimination and constituted a great change in the kind of documents issued by the Committee. In fact, from that session onwards, Recommendations became not only longer, but also more comprehensive, less technical and more practical. The 1992 GR helped States understand the relation between violent abuses perpetrated against women and their persistent discrimination. The interpretative work of the Committee here resulted fundamental at different concerns; first of all, it defined gender-based violence as a form of discrimination, also deeming the latter as a violation of women's rights. Thus, the Recommendation widened the scope of the Convention by condemning as forms of discrimination and violation of women's rights all the oppressive practices perpetuated in the public and private sphere and even acts of non-State actors. Interpretation served as well to include in the spirit of the Convention all those rights not explicitly cited within the Treaty but related to the achievement of men-women equality. (Heisoo, 2004:7; Shahrul Mizan, 2005:13; Cusack & Pusey, 2013:57-58).

2.2. The 'Istanbul Convention' Monitoring Procedure

Before explaining the steps and actors involved within the monitoring procedure established by the Istanbul Convention, it is deemed relevant reminding the main objectives of European monitoring as set out by De Beco (2011:172-178). The general monitoring mechanism within European institutions aims at assessing member-States implementation of Human Rights Treaties and at providing them with a guidance for future improvements. Monitoring is also conceived as allowing a permanent dialogue between member-States and Treaty bodies, with a constant exchange of information. Moreover, data submitted by Countries constitute the basis on which Treaty bodies evaluate their level of implementation and their Human Rights situation.

The monitoring procedure of the Istanbul Convention is carried out through periodic reporting by member-States to a Committee of independent experts. Articles 66 to 70 establish the specific procedure and the two pillars

responsible for monitoring States' implementation: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Committee of the Parties, which are responsible of overseeing member-States' situation and level of compliance with the Istanbul Convention. The monitoring mechanism here set out is unique in the international panorama, since it constitutes a great chance for member-States to exchange successful good practices. Moreover, it is expected to create highly reliable data, great progress and strong support also thanks to the in-depth analysis carried out on a Country-by-Country basis by the Group of experts. Focusing on the latter, its professional and independent membership is conceived to ensure both constant monitoring on member-States' compliance and long-term effectiveness of its analysis and constant relation with Countries (Organization of American States and Council of Europe, 2014).

The GREVIO Committee

The role, principles, functioning and composition of GREVIO are set out at Article 66. The first Committee was composed of 10 members and was elected by the Committee of the Parties in 2015. Since the 25th ratification of the Convention, GREVIO is composed on 15 members with a four-year term. The main characteristics of these members are their independence and expertise. In fact, even if they are citizens of States parties to the Convention, they do act on their personal capacity and not on behalf of their Countries of origin. They are also personalities with recognized competence or high professional experience in fields of Human Rights, gender equality, VAW and DV. Members of GREVIO shall also equally represent gender, geographical areas, legal systems and other entities concerned with VAW and DV issues.

As hinted above, GREVIO is the main entity responsible for evaluating the level of implementation of the Istanbul Convention within member-States, evaluation happening on a Country-by-Country basis. In addition to examining periodic States' reports on implementation measures, GREVIO later publish evaluative accounts on their actions and may adopt General Recommendations on specific

themes or concepts contained in the Convention. It is also enabled to stat inquiry procedures in specific cases enlisted later on in this section (Jones&Manjoo, 2018: Chapter 5.4.5).

The submission for periodic reports by States is established by the Convention as an obligation, reports which can concern either the entirety or only a part of the Treaty. Member-States are required to give a first report within one year from ratification, report that has to include the measures the Government has taken to implement the Convention. This first report is crucial since it constitutes the starting point of the evaluation by the Committee over State improvements in their Human Rights situation, as well as the beginning of the permanent dialogue State-Treaty body. Subsequent reports are to be submitted every four years, each being based on Recommendations made in the previous cycle (Jones&Manjoo, 2018).

Information Gathering: State Questionnaire and the Involvement of Third Parties

The first complex step of the monitoring procedure established by the Istanbul Convention is *information gathering*, possible through *State questionnaire* and the involvement of *third parties*.

Periodic reporting starts through a questionnaire to be drawn by member-States under the form of a report. This questionnaire is comprehensive and requires detailed information on all the aspects covered by the provisions of the Convention. Information concerns tools and laws implementing the ‘3Ps’ of the Convention and include data on legislative, administrative and other kinds of measures put in place by the Government (Jones&Manjoo, 2018: Chapter 5.4.7-8). More specifically, the *questionnaire* articulates the information to be provided as follows.

Disaggregated data, which include the plans adopted to address VAW and the related financial resources allocated; national and separated bodies constituted for the implementation of the Convention; other entities collecting relevant data. Such

information should be provided disaggregated under sex, age, relation victim-perpetrator and kind of violence.

Information on Prevention, where we find governmental campaigns, the need for changes in teaching materials and the collection of separated information on recovery programs for perpetrators of domestic and sexual violence, including number, resources, measures towards victims and the inclusion of gender understanding.

Protection and support. Here the Convention refers to information on general support services (legal, financial, psychological, housing, employment, educational), health and social services, as well as on measures allowing victims to be informed on available support and legal measures, telephone helplines and possibility of access to complaint mechanisms. The provision of protection services always has to consider the presence of children witnesses.

Substantive law measures hint at data on both the existing legal framework and on the steps to avoid legislative gaps, but also on specific national legislation on VAW, guidelines for professionals on the legal framework, extracts of relevant domestic laws on VAW. Data shall include as well access to civil remedies procedures against the perpetrator and against State authorities (and related amount), compensation procedures against the perpetrator and State authorities (number of demands and number of awarded cases), measures for consideration of VAW in child custody decisions. Information should also include data on domestic laws addressing attempts of physical and sexual violence, FGM, forced marriage, abortion and sterilization; criminalization measures against physical and sexual violence (included rape), psychological violence, stalking, FGM, forces marriage, sterilization and abortion, sexual harassment, together with sanctions, supervision of convicted individuals and denial of parental rights.

Another important aspect is related to investigation and prosecution. At this respect, information should refer to those measures aimed at: prompt State response; protection measures during investigation (information, chance for women to be heard, avoidance of contact victim-perpetrator); the assessment of risk of repetition of violence during investigations; the issuance of emergency

barring and restraining orders. As well, Governments should provide data about existing domestic laws allowing NGOs and CSOs to assist victims.

In the sections on disaggregated data, prevention and prosecution, space is given to information about the involvement, recognition and contribution of NGOs, CSOs and other groups concerned with women's rights to the implementation of the Convention and to the drafting of report (Council of Europe, 2016). The questionnaire, as by the reported scheme, demands States not only to cite the measures and existing laws, steps and changes adopted and put in place since the last monitoring cycle; conversely, information concerns all the main Articles of the Convention and all the major crimes and forms of violence included in the text. As well, the questionnaire suggests that cooperation with non-State actors is a crucial tool for Governments, which are also encouraged to recognise their role in the protection of victims and their contribution in policy improvements. Here, as well as in other moments of the overall procedure, the importance of dialogue can be detected, either within member-States (with national third parties), among them and between them and the Committee.

GREVIO, apart from exchanging information with member-States, gives space to third parties throughout its monitoring. It in fact asks for additional information to be provided by NGOs, National Human Rights Institutions and Civil Society Organizations; together with them, GREVIO also asks and exchanges data and reliable knowledge with other Council of Europe entities and Treaty bodies, exchange which embodies the intersectionality of Human Rights. These third parties are major partners for the Committee in its implementation assessment and it invites them to provide additional relevant information at any time, together with meeting their representatives during Country visits. Why are NGOs, NHRIs and CSOs so important? What are the advantages of their involvement within the monitoring procedure on the respect for women's rights?

NGOs, CSOs and NHRIs are objective actors, out of political interests, being rather concerned with the Human Rights situation within their Countries and with the enjoyment of fundamental freedoms by a specific section of society or vulnerable group. The Istanbul Convention per se encourages Countries to

recognize and support (also financially) the importance and work of these non-State actors in their domestic context. Their involvement in ad-hoc policy design is also expected and thought as an aid to Government for greater Treaty compliance. The Convention itself constitutes for NGOs a strong basis to make their claims and demands heard at Parliamentary level and to push it to discuss and adopt the suggested and needed laws and policies. Since they are out of the Governmental sphere, they are crucial, objective sources of information for Treaty bodies, to which they are encouraged to submit shadow reports on the specific State. These reports are crucial since they counterbalance those given by States, allowing (in this case) GREVIO to detect lacks, omissions or untrue data within States' accounts. At the domestic level, the involvement of non-State actors within the monitoring process gives them advantages and chances that would not be possible otherwise. In fact, they can make their Governments accountable for their action, inaction and lack of compliance with Treaty body suggestions, but first and foremost, they have the chance to raise their concern for better Human Rights policies, up to making those to be discussed at parliamentary level (Jones & Majoo, 2018: Chapter 5.4.5; Creamer & Simmons, 2018:32-38, 44-46; Pocar, Bernard, & Wille, 1997). International NGOs, more specifically, can have an even greater and double influence; while on the one side they give greater space to the struggle of local activists and organizations concerned with specific Human Rights, they can also call for other Countries and IOs to side against the Government for its inactions. Thus, costs for breaches or non-compliance become critical for the State, which is pushed by the action of NGOs and INGOs towards policy change. When discussing about complicated issues like the elimination of women's violence and discrimination, the role of INGOs and NGOs is fundamental. In fact, their double pressure – domestic and international - pushes Governments towards changing their existing discriminatory or insufficient laws and undertake long-term measures, the only with real effect on such a complex field as women's equality and rights (Dongwook, 2013; Organization of American States and Council of Europe, 2014:90,92,94).

Country Visit

The second important step is the *Country visit*, which generally follows the dialogue and the submission of reports. This visit happens in a cooperative state between GREVIO members and State authorities, which usually invite the former or authorize them to come and visit the State. This visit can happen mainly in two situations: when the submitted report reveals to be superficial or with insufficient information, or when GREVIO identifies a situation needing immediate action as to limit or prevent serious patterns of Human Rights violations as falling within its scope. The Country visit implies confidential meetings with representatives of central and regional authorities, but also with members of NGOs, NHRIs, CSOs, together with victims of crimes punished by treaty provisions. At the end of the visit, members of the GREVIO Committee draft a report, which has to be sent to the Government for comments (Jones & Majoo, 2018: Chapter 5.4.7-8).

Final Report and Conclusion

The last step concern the drafting and publication of the *final report*. When the Government has sent back its comments subsequent to the draft report, GREVIO uses these as the basis for its final report, which is again transmitted to authorities. The final report, after its adoption, is made public on the webpage of the Council of Europe Istanbul Convention, together with the comments from the considered State. The final report constitutes the basis for the subsequent State report, since it contains the areas of greater concerns for GREVIO and indicates the ways and policies to be adopted as to better implement the Convention and as to overcome detected difficulties (McQuigg, 2012:378-380). The final report, together with those from the State and non-State actors and with the consideration meeting, are all part of the ongoing dialogue at the basis of the monitoring mechanism.

The role of the Committee of the Parties

As cited at the beginning of the present section, the monitoring mechanism of the Istanbul Convention is based on two pillars: the GREVIO Committee and the Committee of the Parties. The latter is a political body made of representatives of member-States to the Convention, which first meeting in 2015 saw the election of the first GREVIO Committee. This political entity has two main tasks. On the one hand, it adopts, based on GREVIO reports, Recommendations on the measures to be taken by Countries to give greater effect to the Conclusions of the Group of Experts. On the other hand, it examines the outcome of inquiries carried out by members of GREVIO, considering the subsequent needed measures (Jones & Majoo, 2018: Chapter 5.4; De Vido, 2016:84).

GREVIO Special Inquiry Procedure

It has been hinted that GREVIO members can be appointed with carrying out an inquiry in specific situations. In fact, as by Article 68(13), the Committee can start what is known as the ‘Special Inquiry Procedure’ if it receives reliable sufficient information about a situation within a member-State requiring immediate action as to stop or prevent serious continuative pattern of violation of any rights covered by the Istanbul Convention. The Special Inquiry includes the possibility for the Treaty body to request an urgent report on the situation to the considered Country and, based on the available information, designate members to investigate and report back. If Government authorities give their consent, the Procedure can even include a Country visit, at the end of which findings and final report are examined by the Group of Experts. Subsequently, they are transmitted to the Country concerned together with comments and recommendations; report and comments are also transmitted to the political body of the Istanbul Convention, the Committee of the Parties (Jones & Majoo, 2018; McQuigg, 2012:380).

As from De Vido’s opinion (2016:85), it is difficult to establish the degree of impact of the work of GREVIO due to its recent establishment. In any case, the Italian scholar reminds how the General Recommendations issued by GREVIO,

like other monitoring bodies, are recognized as influencing the respect for Human Rights Treaties, hence contributing to an overall improvements of Human Rights situation.

The Role of the Dialogue State-Committee

Among the aim of the monitoring mechanism established at the European level within different Human Rights Treaties is to establish and keep an ongoing constructive dialogue between the monitoring body and member-States of the Council of Europe. The monitoring process and States' obligation for periodic reports are the embodiment of this dialogue, since throughout the former we have the appreciation of the steps and efforts undertaken by the State, but also the provision of recommendations and suggestions on how to overcome obstacles and difficulties.

At this respect, it is important to say how the dialogue and the monitoring has been conceived at the advantage and in the interests of member-States. The monitoring body does not perform judicial functions, but is there to support and guide Governments in their gradual major compliance with Treaty provisions, and obligations, and in the improvement of their Human Rights situation. Monitoring is, together with an important mechanism built to support Countries, an ongoing process with constant exchange of information between Treaty bodies and States, where the end of a cycle represents the beginning of the following one. The follow-up procedures is also the embodiment of this crucial ongoing dialogue between the two sides, since recommendations, questions, concerns and suggestions made by the Treaty body in the last report are always referred to in the following one. The consideration meeting is not to be intended as a judgment by experts on the action or inaction of the State, but as an occasion for the latter to give them clarifications and eventually provide additional relevant information on efforts and problems.

Within the monitoring procedure, part of the dialogue is carried out at national level during the drafting of the report, since officials of the different Government

Departments involved are expected to be aware of the existing Treaties, their deriving rights and the obligations they pose on their respective fields. This way, the contribution of different actors within the State to the report is an occasion to exchange information and to increase the general awareness in the Public Administration.

As hinted above, the monitoring process has been built in the interests of member-States, since the acknowledgment of positive steps and efficient policies may also help other Countries facing the same problems, improving the general Human Rights situation of the whole area. This anyway goes against the widespread perception of monitoring and examination of reports as a moment where the inactions and lacks of the government are exposed by the Committee, with negative repercussions on the reputation of the former towards both the Committee itself and the international community.

When focusing on the CEDAW Convention and related monitoring and dialogue with member-States, it is clear how the periodic report examination and the active role of States' officials during consideration, all aims at maintaining a constant constructive dialogue between the parties. In this dialogue, the constant information exchange goes at the advantage of citizens' enjoyment of rights, which can be even greater also thanks to the pressure NGOs and other non-State actors can exercise on Governments through their involvement in the monitoring process.

In 1992, the CEDAW Committee decided to dedicate at least one meeting and a half to the consideration of the first State report, eliminating the previous existing time limit. This change is an emblematic representation of the fundamental role the first State report plays for the future of implementation and Human Rights improvement and, consequently, for the constructive dialogue between States and the Committee. For the CEDAW, as well as for the Istanbul Convention, the follow-up procedure with constant reference to previous documents, concerns and issues is part of the dialogue; Countries are signalled with the areas where greater action is perceived as needed to properly implement the Convention, with the Committee expecting to see reference to ad-hoc measures in the upcoming report.

General Recommendation No6 of 1988²⁴ by the CEDAW Committee concerned one of the main ways to implement the Convention and give effect to the constructive dialogue. This Recommendation stated that all parts of the Government and of the Civil Society are expected to be aware of the CEDAW Treaty, to which authorities are called to give maximum publicity. The dialogue then continues at domestic level with the duty for Governments to review Committee consideration and final suggestions, take all indicated steps and explain them in future accounts to the Treaty body (Ilic & Corty, 1997:311-312).

Dialogue exists to assist the implementation of Treaty by member-States, since Treaty bodies Recommendations aim at clarifying the scope of their obligations. Dialogue also serves for Committee members to raise their concerns and critical issues within comments at the end of each cycle. Identifying controversial aspects of States' action or potential omissions is hence the aim of the Committee's General Comments. These deals with specific themes or Articles within the referred Treaty, reflect the outcome of the consideration meeting and constitute the guidelines on the basis of which the State has to draft its following report. In fact, the recommendations and question posed by the Treaty body within these Comments are to be referred by the State in the upcoming cycle, again giving continuity to the constructive dialogue (Pocar, Bernard, & Wille, 1997:40; De Beco, 2011:172-195).

²⁴ UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), *General Recommendation No. 6 on effective national machinery and publicity*, 7th session, 1988.

CHAPTER 3:
ELEMENTS AFFECTING the EFFECTIVENESS of MONITORING
and the ROLE of NGOs

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3.1. Low-quality and Overdue States Reports to the CEDAW Committee: causal factors and explanation

In the previous Chapters of this dissertation, we have investigated the International Human Rights Law system, both in the context of the United Nations and of the Council of Europe. The mechanisms instituted to ensure and monitor the application of ad-hoc Conventions related to women's rights have been explored, showing how complex they are both for the appointed bodies of experts and for member-States. It has been hinted how social rules and constructions constitute still nowadays a huge obstacle to a uniform Treaty application and for the existence of substantive equality for women, which results in a lower efficacy and relevance of the monitoring mechanisms and their work.

The present Chapter aims precisely at enlisting and explaining the major factors hampering a proper and homogeneous impact of the CEDAW Committee, how these lead to delayed or superficial reports, but also how the latter can be submitted either as voluntary States' actions or due to more complicated problems. Later on, we will refer to the consequences of delays and superficiality of Countries' reports on the dialogue State-CEDAW Committee and on the resulting effective States' compliance. Last, we will shift our attention to the Council of Europe, as to explore the role and relevance of NGOs and CSOs in the provision of professionals' training and protection and support services to victims, here including also assistance in raising complaints to international instruments. For these matters, we will refer to two of the latest reports provided by NGOs to the GREVIO Committee and two Final Reports the Group of Experts issued on member-States. The ultimate aims are to underline the obstructions constituted by culture and stereotyped behaviours of States' personnel, as well as the importance the work and diffusion of NGOs have for a greater public knowledge and application of the Istanbul Convention (in this case) and, thus, for the potential greater impact of GREVIO suggestions.

Throughout the previous Chapter, we have seen how the monitoring procedure in general implies a continuous exchange of relevant information and advice between the monitoring body and member-States, with the latter constantly

referring to previously given advice and requests of the former in each of their reports, as well as to accomplished changes. These elements, among others, should be the basis for the optimal effectiveness of the CEDAW Convention and for the work of its Committee to be relevant as wished, but unfortunately, reality is much more complex, with structural changes resulting harder to be put into practice. The impact and relevance of the CEDAW Convention and Committee is in fact jeopardized because of a series of elements and phenomena both consequent to voluntary decision to ignore obligations and advice or to factors independent from States' will. Despite the wish for more or less homogeneous gradual improvements on women equality and empowerment as result of the monitoring and dialogue, States' response to the advice of the monitoring body is not the same everywhere, ranging from immediate to almost no response at all. The main explanation for that is to be found in the non-binding nature of the Committee Recommendations, which, together with their variable degree of specificity or generality, do not give sufficient incentive for member-States cooperation and compliance.

Another element lowering the impact of monitoring in the long-run is linked to States' failure to satisfy reporting requirements. In fact, apart from constantly referring to previous cycles and requests, the CEDAW Committee expects member-States to provide accurate, precise and complete information concerning both achievements and difficulties in complying with the Convention, as well as to promote an active participation of a wide range of actors and to protect survivors who decide to give their personal traumatic experiences. At this respect, it has been detected how, sometimes, States' reports to the CEDAW Committee do not include data from other groups concerned with women's rights and equality, this being due either to difficulties in collecting information or to a deliberate omission because of the risks of reputational consequences.

Why do Countries decide to omit lacks, difficulties and failures in their reports to the Committee? It is not an exception that the monitoring process, being constant and carried out by an external entity, is perceived as an intrusion to their sovereignty, but it is necessary to remind how the work of the Committee starts only after ratification, which is a voluntary action. In most cases, by the way, the

presence, checking and consideration of the State's actions and inactions by the Treaty body is thought as a judgment. Countries thus fear that, if lacks and failures are made public, they will be exploited by opposing groups or Governments, with negative consequences on the State's situation and international reputation (Bernard & Wille, 1997: 26).

The discussion on non-compliance, the reasons and consequences of it leads us again to the heterogeneous situation of member-States within the International Human Rights Law system. Real respect for Treaty commitments can be affected by voluntary decoupling, but much more often the problem is Countries' inability to comply with their obligations. Sometimes, external pressure and sanctions can worsen States' capability to comply with what is requested from them by Treaty bodies, especially in the case of Governments with lower democratic capacities. It can even happen that external pressure for their greater compliance result in breaches being more likely to happen, which is again something opposite to deliberate decoupling (Cole, 2015: 408-409).

CEDAW, on its side, is recognized as a Treaty having great aspirations and aims for its time compared to other Human Rights treaties, but it is also a Convention with a weak enforcement mechanism, which impact differs according to the kind of right considered. Engelhart&Miller (2014: 23-25) recognized how CEDAW had a more relevant impact on women's political rights, lower for social and almost absent for economic rights. At this respect, it must be remembered how traditional roles, taboos, and rooted social norms are among the main elements making the change towards substantive equality harder. CEDAW procedure relies on self-monitoring by member-States, includes constant follow-up and the setting of a constructive dialogue among its basis. The latter in particular was designed to ease compliance and enhance the impact of the Convention, but this is contrasted by a wrong perception of monitoring from States. Another fundamental element of the CEDAW monitoring process is the involvement of different State and non-State actors in the drafting of the periodic account, which can be difficult for recent democracies who end up submitting poor reports to the Committee.

Member-States to the CEDAW Convention belongs to different socio-cultural backgrounds, but they are also highly different in terms of resources and capabilities. In most cases, States parties to the CEDAW Convention without Reservations related to its Committee are also members to other International Human Rights Treaties implying their own monitoring procedures, bodies and obligations.

The International Human Rights system of the United Nations have been enriched, throughout the decades, of many treaties protecting each time new categories of rights and individuals. The co-existence of so many Conventions and the subsequent numerous obligations put on the States' shoulders constitute many times a great struggle for their Governmental apparatus, which is worsened by overlapping due dates of the different monitoring procedures. In the previous chapters we have seen how the (or we may say one) monitoring procedure is a very complex set of steps and duties both for the monitoring body and considered State, which has to involve many Departments and groups both in and outside its structure. It is hence quite easy to realize the hard task States are expected to fulfil in satisfying each set of reporting requirements and in submitting satisfying reports in the due times. Unfortunately, member-States that are parties to many Conventions each implying a monitoring procedure are affected by the so-called '*monitoring fatigue*': the struggle and difficulties States have in adequately submitting complete and properly drafted reports to all the Treaty bodies, due to overlapping deadlines and (sometimes) limited resources.

When referring specifically to the CEDAW Convention and Committee, it has not been an exception that this monitoring fatigue brought States not to submit their periodic reports or, more often, to give the Committee only partial, superficial or highly overdue documents. Conversely to the case of decoupling, monitoring fatigue and the consequences on proper monitoring and potential cumulative improvements on women's rights does not depend on a willing and conscious decision from the Government, but rather from the struggle in accomplishing a set of complex simultaneous procedures. To this, many recent democracies or developing Countries frequently lack of the needed resources, competent personnel, infrastructures and services as to adequately fulfil their obligations and

effectively set out satisfying reports, providing instead only partial accounts or, in the worst cases, not submitting them at all (Bernard & Wille, 1997:26-28; De Beco, 2011:172-195).

Reservations and their criticality for an effective Treaty implementation is an issue already hinted at within other Chapters of this Dissertation. This instrument foreseen by the majority of International Human Rights Treaties allows member-States not to be bound by some provisions, and they have been used sometimes to limit or exclude the power and competence of monitoring mechanisms. Reservations to the CEDAW Convention have been a great concern for the Committee, since many non-democratic or recently-turn democratic States posed them on two of the core Articles: number 2 (set of measures to be implemented for the fight against VAW) and number 16 (family-related matters of discrimination). Other member-States posed Reservations on equally important Articles related to women's substantive equality and empowerment in the name of the role of traditions and religion within their domestic contexts. As well, Reservations have been used to justify the omission of some sort of information from States' reports or the persistence at the domestic level of discriminatory laws and practices, here again calling the link between the latter and the role and power of religion. The Committee has hence called the attention both on the incompatibility of these Reservations with the Treaty itself, as well as on their consequences on the impact of monitoring and on improvements of women's rights (Jones & Majoo, 2018: Chapter 1.3-1.5; Cole, 2012:1139-1140, 1156-58; Creamer & Simmons, 2018: 33; WHO - Department of Gender, 2007: Chapter 2.5).

Reservations and decoupling are two strictly interconnected elements for Treaty and monitoring effectiveness since they are, first of all, deliberate and controversial States' actions. What are the other elements of decoupling limiting the effectiveness of the monitoring procedure?

Most of the existing monitoring procedures – and CEDAW among them – require States to submit reports with some precise features, among which there is completeness of information and veracity. The latter means that Government

authorities and Departments constitutes the main source of data for Treaty bodies and their evaluation. Treaty bodies such as the CEDAW Committee, on the other side, require States to consult with non-State domestic actors, like National Human Rights Institutions and relevant NGOs, as to get a complete picture of their Human Rights situation and compliance difficulties. Veracity of provided information and the involvement of entities out of Government control is a highly controversial matter when it comes to insincere ratifiers and non-democratic Governments strategically becoming party to International Human Rights Treaties.

Countries with low democratic principles pose great limits to Human Rights and freedoms of their citizens, consequently limiting the chance for domestic non-State actors to provide real and accurate information about the domestic Human Rights situation to third and external entities (Treaty bodies). This, as hinted here above, is linked to the so-called *decoupling* that non-democratic Governments frequently adopt when adhering to Human Rights Conventions. *Decoupling* refer to the fundamental difference and contrast between formal adherence of a Country to Treaties protecting some sectors of society (like women and their equality and empowerment in the case of the CEDAW Convention) and the actual persistence of violations and discriminatory practices and laws within its domestic environment (Bilder, et al., 1994: Chapter 1-2). We can hence see how Reservations – together with a strategic adherence to Human Rights Conventions – prove themselves to be a great limitation to the effectiveness of monitoring procedures. More specifically, States posing Reservations to core CEDAW provisions aimed at empowering women and granting their substantial equality – whether in the name of traditions, incompatibility with domestic law or the power of religion – quite often coincide with those decoupling ratification from practice. The result is that these Countries fail in fulfilling their reporting obligations and respect due dates, but they also hamper the potential greater impact of the work of the CEDAW Committee both at the domestic and international level.

As referred at other concerns throughout this dissertation, the real effects of monitoring can be detected only throughout time; they are, in fact, *cumulative*. As

shown by Englehart&Miller (2014:25-26), the impact of monitoring on the realization of women equality varies according to the ‘kind’ of rights taken into consideration. At this respect comes the claim of the *cumulative* effects of monitoring and namely of CEDAW Recommendations. Their impact cannot be detected overnight nor after the end of just one cycle, also due to the huge difficulties existing in eradicating rooted traditions and social rules and norms, which have hampered the realization of gender equality for centuries. Consequently, in whatever context we consider, legislative and social changes aimed at a greater and – most importantly – real equality between men and women takes many years (and many monitoring cycles) to be formulated, introduced into domestic laws and people’s daily life, accepted and finally become part of ‘normality’ (Creamer & Simmons, 2018:50-52).

3.2. Consequences of Delayed and Absent Reports on the Dialogue State-Committee and on Compliance

All the previously explained elements and phenomena – decoupling, reservations, involuntary non-compliance and monitoring fatigue – result in having a huge impact on the effectiveness of monitoring in general, but even more in the case of CEDAW Committee monitoring due to the delicate issues it has to deal with (women’s rights and gender equality). If a member-State to the CEDAW Convention starts failing to comply with its reporting obligations, submitting hugely overdue reports or present incomplete or superficial documents, this will for sure influence the possibility for the State to achieve the gradual cumulative improvements we have hinted at here above.

Failure to comply with reporting obligations and the submission of incomplete or untrue reports will also hamper one of the main basis of the CEDAW monitoring mechanism: the constructive dialogue State-Committee. If the Committee only has unsatisfactory or incomplete documents available, or if it realizes it is lacking follow-ups from one Country, it will be hard to help it achieving a better Human Rights situation through the supporting and consulting role it can play for State’s authorities when facing difficulties. The constructive dialogue is in fact designed

as a way for Countries to seek advice from experts, always through the monitoring and consideration procedure. It is not a judgment, as it is often perceived and feared. The monitoring process, follow-ups, report consideration are all part of an instrument conceived to cooperatively seek ways to comply more and more with the CEDAW Convention, help the Country getting in line with its requirements and, overall, provide a fairer social, economic and cultural environment for women, eradicating all those violent and unjust practices that always negatively affected them.

Since monitoring is carried out by an external entity (the CEDAW Committee) and documents are made public, non-compliance or great delays may even impede the Country to become an example at the international level. How can this be possible? Proper monitoring and an efficient drafting of the periodic reports, as we have explained earlier, foresees the presentation and explanation of successful policies the State has put in place to comply with Convention provisions and to eradicate violence and discrimination against women and girls. The Committee, at this respect, recognizes State's accomplishments in its concluding comments. Since all these reports are available to other States and entities, a successful policy or strategy one Government has found to solve a problem or controversy related either to gender equality or to VAW can become an inspiration for other Governments having the same situation or difficulties. This is actually one of the main advantages of the monitoring mechanism, and of CEDAW one: if the whole process is carried out properly, it can become an international network for mutual help, support and advice among member-States, which benefits will concern the international community as a whole and women throughout the world.

Overdue or superficial reports have hence consequences on many aspects. They lower the potential improvements of women's situation within one Country and they impede the CEDAW Committee to properly and successfully help and guide member-States in their gradual compliance with the Convention. Thus, since it becomes hard for experts to work on insufficient or absent recent information, this hampers the constant dialogue with the Country – whether as consequence of deliberate refusal or lacks or to low State's capabilities and resources – and the impact of the Committee work is extremely reduced. These consequences are

almost a vicious cycle; deliberate State action or low capabilities leads to insufficient or unreal reports; the Committee hence struggles to provide counselling and advice to the Government and to check on effective Convention implementation. Delayed or absent reports hampers the follow-up procedure and the constant data exchange, with the impact and role of the CEDAW Committee being lower than wished. All these steps affect in the end the domestic situation of women, since the lack of dialogue and support by either the Treaty body and the international community may allow violence to be still accepted and tolerated, going the opposite direction from the aim of the 1979 Convention.

Ineffective monitoring and lower women's rights improvement within one member-State do not have negative consequences only at the domestic level, but also internationally. The system of Human Rights monitoring within the United Nations can be compared to a network of peers. Independent skilled experts – and not States' representatives – consider and evaluate the steps taken periodically by member-States to a Convention, but first of all they are there as super partes advisors. I have just stated that the system is comparable to a network of peers because each member can learn from others' policies, strategies and ad-hoc solutions or, on the other side, can support a struggling State in creating a fairer environment for – in the case of CEDAW – women. The International Human Rights system can be intended hence as a cooperative network, not as one where lacks an failure are tactically exploited by others to worsen one State's situation and put its reputation at stake. Unfortunately, poor reporting or non-compliance are due among others to Countries' fear or perception of this system as one judging them, lowering the incentives they should and may have in cooperating and exchanging data and advice both with the monitoring bodies and between each other.

As we have seen in the present and previous sections, the obligation for periodic reporting can be perceived as a time-waste and as a bureaucratic burden for Governments, while in reality it has been explained how the primary aim of the monitoring procedure in general is to provide Countries' assistance. As well, the existing monitoring mechanisms have been constituted to promote and protect Human Rights and correct periodic reporting can be a great chance for

Governments to reaffirm their commitment to respect Human Rights of their citizens. Overall, proper and due reporting should be seen as an investment and compliance with their obligations can have great positive effects on Countries' external reputation. In the present section we have also shown how the effects of monitoring and of the constructive dialogue are defined '*cumulative*', meaning that changes in legislation but first of all in the cultural background of citizens can only be detected in the long-term. It has been pointed out how the consideration and response by Treaty bodies – and the CEDAW Committee among them – includes the recognition of the efforts made by Countries to solve their Human Rights problems, as well as the achievements to comply with previously-provided indications. At this respect, it is possible to talk and refer to the usefulness of the constructive dialogue, since appreciation of positive changes can come not only from the Committee, but also from the Government itself. How? Through the comparison of earlier and later reports and concluding comments, which means considering the exchange of information that have been going on between the Government and the monitoring body. The positive effect of effective and proper assessment do not end here; in fact, if a Country does not hide its faults or difficulties, comply with its Human Rights commitments and respect experts' indications and the rights of its citizens, the latter and the international community will have an improved opinion and good faith towards the complying Government. Good faith, both at the national and international level, can boost the State's and international situation at many concerns. A State that respects and protects Human Rights of its citizens will have in return an improved positive perception and good faith precisely from its domestic constituency. As well, seeing that the efforts undertaken throughout time are appreciated and potentially taken as reference by other Countries and by experts can even boost the Government willingness to further improve its Human Rights policies, thus meaning an even greater compliance with its obligations (Alston, 1997).

Cross-Referencing

We have shown how the major problems affecting proper reporting and a maximized effectiveness of monitoring and the constructive dialogue are the failure of Countries to submit their periodic reports or great delays in doing so, together with '*monitoring fatigue*'. In the previous section we have discussed about the latter, showing how the complexity of the International Human Rights system and the coincidence of due times States' reports can make some of them struggle a lot. A proposed solution for monitoring in general terms, and hence valid also for the problems faced by the CEDAW Committee, is the so-called '*cross-referencing*'. Some pieces of information included in the report to one monitoring body can be useful also in other procedures. Since information gathering is a costly and complex issue, avoid redundancy would be a first great point. Making '*cross-referencing*' would mean that, when Countries are setting up a report, they make reference to other already submitted documents where they believe they have included relevant data. Cross-referencing would hence become a crucial element to help solve many problems of reporting and monitoring effectiveness. It would first avoid redundancy in the information provided by member-States to the different existing monitoring bodies; together with that, it would help lowering involuntary omissions States sometimes commit due to fatigue or insufficient resources. Most importantly, since reference to already existing and provided data would also make gathering and reporting less of a burden for Governments, it could be greatly help reducing – and hopefully eliminating - delays and superficiality of submitted documents.

At the same time, for cross-referencing to become feasible, a double-sided situation is required. On the one hand, already formulated reports and data have to be available to the different bodies, Departments and agencies that may need to consult them. Most importantly, at the domestic level, officials responsible for information collection and report drafting need to have access to those useful data already provided by colleagues of other Departments. The structure of Government Departments, hence, should be more opened as to ease communication and exchange of relevant issues and documents, making also easier the realization of complete and satisfactory accounts to external entities.

Benefits, if such a situation and cooperation is achieved, would present themselves in a successful periodic reporting, but also in a greater national and international cooperation and greater encouragement for States' compliance with their duties. In the end, hopefully, all these elements would bring to a better overall Human Rights situation (Bernard & Wille, 1997).

Cross-referencing and availability of data and documents both among Treaty bodies and member-States to the latter is, without a doubt, a great solution to be considered and put into practice to reduce the burden and fatigue and gradually solve the already exposed problems of incomplete or delayed reports.

'Consolidated' Reports to the CEDAW Committee

The present dissertation concerns the two main existing monitoring mechanisms responsible and tasked with the evaluation of States' effort on gender equality and the elimination of VAW and DV. The following considerations will explore the peculiar tool the CEDAW Committee have postulated to reduce the risk of highly delayed or absent reports and, jointly, increase the impact of its indications to member-States. Overdue reports are, as already discussed, a major obstacle to the potential impact of the existing monitoring mechanisms, and this becomes even more evident when we deal with difficult issues like women's rights and discrimination. As to try solve this problem, the CEDAW Committee has recently found two quite peculiar solutions. On the one hand, it has started to issue its Recommendations on the 'mere' basis of a dialogue with States' authorities. As well, it has proposed Countries to submit '*consolidated*' reports; Countries can, this way, include the information of one to four periodic reports in just one document (Creamer & Simmons, 2018:40-41). The solution to gather with State's authorities, consult with them and then formulate the Committee's advice on the basis of this kind of information exchange can be particularly useful with those member-States actually willing to cooperate and improve their situation, but which may lack adequate resources or trained personnel enabling them to efficiently draft reports. The same can be the case of 'compound' reports, which can ease the task of those member-States with weak communication

infrastructures or which interrelations among Government Departments or with other national agents is not as strong or quick as it should be. The two solutions explained here above are probably and primarily aimed at reducing the administrative and bureaucratic burden for member-States, while trying to get the best from periodic reporting and consultation State-Committee, as it is wished per se. It is anyway necessary to note how, even if a greater and ‘mere’ dialogue and the chance for ‘compound’ accounts can potentially solve the lack of periodicity in States’ reports, but at the same time do not ensure that the provided information is actually complete, true and accurate. This is another reason why the presence and help that other non-State actors, the international community and NGOs can give to the CEDAW Committee should be stressed and further encouraged. It may happen that some member-States try hampering the relation between their national non-governmental groups and external entities like the Treaty bodies for the reason we have explained in previous sections (instrumental ratification, fear of judgment or of truth coming to the surface). These independent actors are mainly composed of common citizens, which are concerned with Human Rights and their respect since they affect their daily life; consequently, as hinted above, the role and importance of NGOs, NHRIs and similar actors is probably as crucial as (or even more) those of State for bodies like the CEDAW Committee. At this respect, it is always necessary to remind how women’s rights and the implementation of laws and policies aiming at their substantive equality is a very difficult point not only in developing Countries, but even in “ours”, where traditions and sometimes religion are latent but still strong and relevant. Hence, the role of actors composed of citizens – namely of women – that are fighting for the improvement and enlargement of possibilities, rights, equality for women and for future generations of girls are fundamental for the shaping of future society and culture, and each little personal effort towards constructive change can make the difference when summed with those of others.

3.3. Protection and support services to victims: the role of NGOs in shadow reports and GREVIO final accounts

In the second Chapter of the present dissertation, the instruments and tools available thanks to the UN and Council of Europe monitoring mechanisms over women's rights have been investigated. We have seen in different sections how the United Nations Office of the High Commissioner for Human Rights have established some Special Procedures to monitor more closely over the situation of some vulnerable sections of society and how, among these Special Procedures, we have the Special Rapporteur on VAW since 1994. Another important improvement regarding women's rights and the proximity of international entities to individuals came in 1999. In this year, the Optional Protocol to the CEDAW Convention entered into force, introducing a crucial, previously inexistent tool: the individual complaint procedure. The Protocol gave since then the possibility for privates to raise their personal experiences of abuses related to gender equality and VAW to the Treaty body, given the exhaustion of precise requirements.

On the side of the Council of Europe, the Second Chapter discussed the revolutionary character of the Istanbul Convention not only for our regional environment, but for the global community and for potential global improvements on women's rights, thanks its openness. This crucial, recent Convention established, like others before it, an entity responsible for checking over changes and compliance by its member-States: the GREVIO Committee (together with the Committee of the Parties).

Unlike the CEDAW Convention, the Istanbul Convention has not been enriched of an individual complaint procedure, since the only organ available for that is the European Court of Human Rights. Notwithstanding this, it does exist, within the European ad-hoc Treaty against DV and VAW, a Special Inquiry Procedure GREVIO can carry out in situations of great persistent Human Rights violations as included in its mandate. The CEDAW Committee, but potentially

GREVIO as well, faces some common problems when it comes to the fulfilment of obligations and to monitoring effectiveness, problems that have been highly debated in the previous section of the present Chapter. The following paragraphs aims at investigating the actual protection of individuals victims of VAW and DV within member-States to the Istanbul Convention. As well, we will understand the recognition Governments give to NGOs in providing support, protection and consultation services to survivors and comparing it with the extent of Governmental efforts in complying with the ‘3Ps’ approach of the Convention itself. The picture that will come out sees that, in many contexts, NGOs are the main actors actually implementing preventive and protective measures, including the training of ad-hoc professionals and the support in victims’ raising of complaints at the available regional and international entities. This kind of reasoning will be based on the analysis of four documents: GREVIO Final Report on France²⁵, published in November 2019; the Shadow Report to GREVIO by the Spanish Women’s Organizations²⁶, published in October 2018; the Shadow Report to GREVIO by Italian Women’s Organizations²⁷, published in October 2018; GREVIO Final Report on Italy²⁸, published in January 2020.

Before exploring those reports in greater depth, a foreword is needed. The different political situations present in each of the considered member-States to the Council of Europe dictates different political agenda, thus shaping the priority allocated at a given moment to gender- and women-related issues. These differences have been detected, by the way, not only across member-States, but

²⁵ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation Report – France*. Adopted on October 28th, 2019; published on November 19th, 2019. Reference: GREVIO/Inf(2019)16.

²⁶ Spanish Istanbul Shadow Platform, *Informe Sombra al GREVIO 2018*. Published on October 22^{ns}, 2018.

²⁷ D.i.Re. – Donne in Rete contro la violenza, *Implementation of the Istanbul Convention in Italy: Shadow Report of women’s NGOs*. Published in October 2018.

²⁸ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation Report – Italy*. Adopted on November 15th, 2019; published on January, 13th, 2020. Reference: GREVIO/Inf(2019)18.

also according to the kind of political leadership present at a given time within one of them.

Such considerations are also relevant for the objects of the present dissertation: the effectiveness and impact of the monitoring mechanisms foreseen by the CEDAW and Istanbul Conventions. Why? The priority given to the fight against VAW and discrimination of women within one State by one Government influences its compliance with the Conventions it has ratified, together with modifying the willingness to adequately fulfil its obligations for prevention and for integrated multi-agency actions. The consequences of such willingness and of the varying degree of involvement and recognition given to non-State actors will later reflect on reporting obligations, on the quality of submitted documents and on the subsequent future impact both of the monitoring mechanisms and of the Conventions themselves.

Before discussing in greater detail the most important provisions of the Istanbul Convention through which NGOs and CSOs could be greatly involved in the procedure as a whole as well as in the socio-cultural change towards women and violence, I want to draw the attention to some equally relevant issues. First of all, the presence and implementation of gender-sensitive policies (Article 6 of the Convention). At this respect, analysed States are invited to increase their efforts in the inclusion of the gender dimension in the design of laws and policies for the fight against VAW. As well, States have to strengthen their actions in assessing the impact of legislative texts on gender equality and in ensuring an effective implementation of those policies related to gender equality and women empowerment. By reading the four reports we have considered here, it is possible to see how GREVIO calls States towards a greater engagement and participation of NGOs and CSOs in all the design, implementation and monitoring of policies and laws related to women and their equality with men (GREVIO, 2019:17-18; GREVIO, 2020:18-20).

The Convention establishes that member-States, as to effectively and properly implement its provisions, should collect statistical disaggregated data on the different forms of violence criminalized by the Treaty, as well as encouraging

research and study on the causes, consequences and impact on society (Article 11). By reading the considered reports on Spain, France and Italy, there is a widespread lack of updated statistics on the different kinds of available services, as well as a lack of coordinated reporting systems. In some cases, when data are actually available, they fail to consider elements such as gender and the relation between victim and perpetrator, often being limited to violence coming from family and current or former partners. As to give better effect to Article 11, Countries are called to build a coordinated system of data collection, here including disaggregated data according to different categories, such as age, gender, relation victim-abuser, presence of child witnesses and forms of violence perpetrated. It is deemed necessary for law-enforcement agencies to harmonise the categories of offences criminalised by the Treaty, categories which will then be used by all the other entities involved in the '3Ps' approach to VAW and DV. Recollected data have to include also those forms of violence or reported event of abuses outside the closest relations of the victim, hence comprising also violence coming from unknown perpetrators. GREVIO considers essential, similarly to many other concerns, to improve the participation and integration of specialised NGOs in the process of Government data collection. These non-State actors are more than often the main carrying out the most comprehensive surveys on VAW, its forms and victims (both direct and indirect) and the impact they have on their lives (D.i.Re., 2018:10-14; GREVIO, 2018:10; GREVIO, 2019:25-29; GREVIO, 2020:28-33). Thus, a proper implementation of Article 11 can only come from integrated and coordinated efforts among Governments, non-State actors, as well as specialised academic researchers.

The importance of public awareness of VAW in its different forms, causes and consequences has been issue of discussion at many points in the present dissertation. Article 13 of the Istanbul Convention is exactly concerned with awareness-raising campaigns and their inter-agency nature. The criticalities that arose from the analysis of reports concern first of all the fact that many existing campaigns have focused on the behaviour women should have (be vigilant) rather than on fighting violent males' attitudes. As well, they have been based on stereotyped representation of women and their roles, almost implying that VAW

is exclusively a women's problem (D.i.Re., 2018:17-18; GREVIO, 2018:11). In many cases, most Governmental campaign have been broadcasted through traditional means like TV and press, which is not enough to reach the majority of the population nor, most importantly, young generations. The Convention invites States to build and spread general public awareness in a systematic co-operation with relevant non-State actors, but also at this respect real involvement has been limited. GREVIO suggestions to properly put in place Article 13 include three main issues. On the one hand, States have to boost their cooperation with and reliance on concerned NGOs' expertise to effectively change societal attitudes towards VAW and establish zero tolerance (D.i.Re., 2018:17-18; GREVIO, 2020:34-35). At this respect, preventive campaigns have to be directed towards youths through appropriate means (social media), since new generations' information is the basis for overturning the male-centred system. Greater efforts have to be made on existing campaigns, by widening their scope towards the inclusion of underestimated or misunderstood issues, like the relevance and gravity of harms on children and sexual violence (GREVIO, 2019:30-31).

Article 15 and 28 are concerned with the attitude of professionals, their role in raising the attention on VAW and in properly assisting survivors and witnesses. As we will see later on, ad-hoc training of professionals encountering victims and witnesses is a huge problem in the analysed States, even if ad-hoc constant information is established among the Convention provisions as part of preventive and protective measures. What emerges from reports is that GREVIO urges Countries to establish compulsory and specific courses both in University Degrees and in the in-service training of already active professionals, where we include not only the judiciary and police forces, but also social assistants, hospital personnel and communication experts. Training of these figures has to be a priority for member-States and has to be carried out taking in greater consideration and establishing stronger cooperation with those entities already committed at this respect, like competent women's NGOs (D.i.Re., 2018:22-23; GREVIO, 2018:14-15; GREVIO, 2019:33-36; GREVIO, 2020:38-40). Properly trained and informed professionals – from judges and lawyers, to doctors and nurses, to social assistants and police officers – are extremely important for a full recovery of the victim and

the protection of eventual vulnerable witnesses. Similarly, they can be pivotal in increasing societal attention on the dimensions and impact of VAW and DV on the different aspects of the life of a Country. How? By being the ones who report, to which the Convention refers in its Article 28. GREVIO encourages member-States to make professionals' duty to report stronger or even compulsory, if they believe a situation of violence or abuse is occurring and/or risk to repeat. At the same time, it is deemed essential to increase victims' information and protection when reporting, also by changing the guidelines of emergency hospital wards as to ensure their autonomy and anonymity, avoiding retaliation (GREVIO, 2019:49-50; GREVIO, 2020:55-56).

Governments have relied and still rely a lot on traditional media for the spread of anti-violence or gender-sensitive campaigns as to try and change the widespread behaviour putting blame on the victim for her sufferings. At the same time, it is extremely realistic that a crucial media like the television is highly responsible for maintaining a stereotyped and sexist vision of women, as well for objectifying them. Article 17 of the Istanbul Convention tries to regulate this responsibility, also focusing on the representation of women in advertising. What GREVIO considers important to put an end to women's objectification and sex-discriminating roles in TV programs is the establishment of a self-regulating and self-reporting mechanism, also passing laws against sexism in advertising with related penalties and an ad-hoc independent observatory (D.i.Re., 2018:24-25; GREVIO, 2018:15-16; GREVIO, 2019:37-39). These measures are aimed at ensuring the prohibition and elimination of sex-based discrimination, respecting the equality and dignity of women (GREVIO, 2020:43-45).

The following Articles analysed are related to the protection of victims and provision of adequate remedies, the effective prosecution of perpetrators and the presence and impact of tools enabling individuals or groups to act against inactions or failures of States and their officials (Articles 29, 46, 50 and 55 of the Istanbul Convention). Unfortunately, a stereotyped attitude and great corporatism are still present among those professionals who should help individuals in taking actions against States' inaction or failure of protection, behaviours even more frequent when the reporting individual is a woman. In some cases, responsible

personnel even refuse to welcome women's reports, for which they are forced to recur to non-State instruments like the Human Rights Defender. When domestic laws enable women or their groups to act against the State, these tools are little applied and often overturned by other Courts' decisions; in other cases, remedies to women from the State are inadequate or limited to gross violations of their rights. The general GREVIO advice when it comes to actions against States' failures is to ensure a greater availability and use of ad-hoc tools, in cooperation with NGOs; as well, measures and adequate remedies should not be limited to great violations, but rather be extended to all the forms of violence criminalised by the Convention (GREVIO, 2018:22; GREVIO, 2019:51; GREVIO, 2020:57).

When prosecuting an act of violence against women and girls, the Convention establishes a set of aggravating circumstances exacerbating penalties and punishment for perpetrators. In most of the cases, the considered member-State apply aggravating circumstances when it comes to the presence of a child witness or victim or when the crime has been committed for futile motives – the so-called 'honour' crimes (D.i.Re., 2018:33; GREVIO, 2019:63-64; GREVIO, 2020:66). GREVIO urges instead Countries to consider and apply those aggravating circumstances related to sexual violence and rape. More specifically, when referring to the latter, aggravating issues should include the use of substances making the victim unaware of being raped, as well as the consideration of both physical and psychological harm consequent to this sort of violence (GREVIO, 2019:63-64; GREVIO, 2020:66).

What lowers appropriate prosecution and has often lead to impunity is the delays related to judicial proceedings or to investigations, which is worsened by the absence of adequate personnel able to establish a relationship of trust and confidentiality with the survivor (D.i.Re., 2018:49; GREVIO, 2018:25). GREVIO calls for reducing delays in proceedings, increasing the presence of trained individuals also trough the cooperation with women's NGOs. Investigations should be carried out with a gendered understanding of the nature and consequences of VAW, for which responsiveness should be adequate when it comes to welcoming the victim and assisting her throughout the whole reporting and prosecution process (GREVIO, 2019:63-66; GREVIO, 2020:68-71).

Talking about the importance and controversies related to victims' reporting, ex officio proceedings can be crucial, together with the aforementioned reporting by professionals. In fact, victims often refuse to report for fear of repercussions, or they withdraw their reports hoping for a behavioural change of their abuser. At the same time, professional tasked with welcoming and registering women's reports have been found doubting their reliability based on their gender, which affected the support given to survivors in the aftermaths of violence. GREVIO considers extremely important the role of NGOs – and more specifically of women's ones – in starting ex officio proceedings even in case of absent or withdrawn report, proceedings which have to be bettered also through greater authorities' responsiveness (D.i.Re., 2018:52; GREVIO, 2019:64-65; GREVIO, 2020:76).

From the present analysis, it is easy to see how the Istanbul Convention takes in great consideration the role of non-State actors in the implementation of its '3Ps' approach. As well, the multi-agency approach implies the active presence of external entities like NGOs working side by side with Governments. While in the just-explained issues, NGOs seem to be intended as a sort of 'additional tool' available to member-States, the upcoming Articles will show how they are, indeed, the main sources of support for victims and witnesses of VAW and DV.

A further analysis of the four reports – as hinted here above – focused on those Articles of the Istanbul Convention (or key points) where NGOs are involved or object and where improvements or lack by the State can be detected by either GREVIO members or women NGOs. Namely, we considered matters such as: the multi-agency approach and co-ordinated policies (Article 7); the acknowledgment, support and funding of the State towards NGOs and CSOs (Article 9); provision of general protection and support services, information on protection measures; (Articles 18-20); access to other regional or international complaints mechanisms and related awareness and information (Article 21). Another important focus have been the respect, by the considered member-States, of the Due Diligence principle and obligations, as well as the extent of persistent prejudices or gendered stereotypes in the attitude of officials and personnel dealing with VAW victims.

As hinted, the chosen and analysed documents included two ‘Shadow Reports’ by Women’s NGOs and Groups; the information included in these documents – namely those by Spanish and Italian NGOs – revealed crucial since it sometimes underlined lacks and deficiencies in the actions of Governments. In other cases, the analysis of shadow reports revealed the pivotal role of non-governmental groups in the provision of some services foreseen by the ‘3Ps’ approach of the Istanbul Convention.

Generally speaking, the consultation of the two shadow and of the two final reports revealed some criticalities and alarming issues. First, stereotypes are still persistent among those officials and professionals that should instead help and support victims in their claims and trials against perpetrators (D.i.Re., 2018:25-29). It has even happened that, during a hearing on a sexual violence case, a woman judge posed inappropriate and discriminatory question to the victim, questions which speculated about potential actions of the latter as a concurrent cause leading to her rape (GREVIO, 2018:25). Another criticality arisen from the reports is that the ad-hoc training of judges, lawyers, police officers and social assistants still lacks too frequently of a gendered understanding about the nature and forms of VAW, which does not help in the elimination of prejudiced and stereotyped conceptions about women when they bring their cases to the authorities’ attention. At this respect, police officials or personnel tasked with the consideration of a complaint was found doubting the veracity not only of information provided by victims, but also of those coming from women professionals supporting victims in their recovery (GREVIO, 2018:24). The behaviour of police officials anchored upon outdated prejudices has also been found among the factors hindering women’s appeal against States’ lack of Due Diligence and leading to secondary victimization (D.i.Re., 2018:52; GREVIO, 2018:25; GREVIO, 2019). Government’s failure to respect its Due Diligence Obligations has often brought to deadly outcomes in risky situations of violence; unfortunately, this kind of responsibility has been sometimes recognised too late due to long waiting times of proceedings, which lowered the impact of the same tool of reporting (D.i.Re., 2018:25-29; GREVIO, 2018:25).

Another critical point revealed by the analysis of these reports concern the difficult coordination of policies and actions between the central government and local authorities like Regions and Departments. Among the main reasons for that, the presence of Regions implementing their own plans and policies against VAW has to be signalled, together with the disparities both in the economic power of local autonomies and the priority they give to gender-based issues. Italian NGOs have claimed that the presence of successful coordination for services provided to survivors strongly depends on the presence of sensitive and committed public officials, while we have seen how in many cases their behaviour is anchored to gender-discriminatory beliefs (D.i.Re., 2018:25). GREVIO, on the other side, recognises the importance of independent surveys as a tool finding and spreading good practices and policies for an effective eradication of this plague (GREVIO, 2020:90). Regional autonomies are tasked in some cases with the management of support and counselling services to victims, but the actual amount allocated here depends on the agreements autonomies sign both with the central Government and with Municipalities (GREVIO, 2018:16). A greater coordination between central Governments and Regional Autonomies is needed according to GREVIO, together with an increase of actions against VAW at the local level (D.i.Re., 2018; GREVIO, 2019). Authorities are called again to recognise the great expertise NGOs have in dealing with the aftermaths of traumatic experiences of women; hence, they are called to cooperate and coordinate with them in the elaboration and monitoring of ad-hoc integrated policies against VAW (GREVIO, 2019:19-20; GREVIO, 2020:21-22).

Reports showed that, in most cases, information about the services and possibilities women have to be protected against repeated violence and to prosecute their perpetrators is available at public courthouses or Police stations (GREVIO, 2019:41). Despite that, it has been signalled how both leaflets and explanations given by police officials are redundant in their content, often being highly technical and difficult to understand for the victim herself (D.i.Re., 2018). On the other side, NGOs are essential in the provision of understandable information, with their personnel present in courthouses or anyway able to establish the crucial climate of trust with the reporting victim. NGOs are, more

than frequently, the main sources women can recur to when seeking different kinds of support and counselling and the availability of services like shelters and housing in general (D.i.Re., 201:308; GREVIO, 2019). In some cases, NGOs are the only training Government professionals in recognising and correctly dealing with potential cases of violence and the different situation of the ‘post’, trying this way to fight the rooted stereotyped behaviour still present even in social services. This does not mean that public social services and the support coming from healthcare personnel is completely absent (D.i.Re., 2018:29-30). Rather than that, it has been recognized how, unfortunately, both ad-hoc training, coordination between social and health services and NGOs and the same strength of these public facilities is jeopardized not only among Countries, but also within one same State, disparities potentially attributable to the reasons set out when referring to VAW political priority.

One of the main focuses of my analysis of reports concerned the available information of and level of access to other channels to arise individual or group complaints of breaches to women’s rights. The picture that came out in the three Countries considered is quite alarming. On the one hand, in Spain, there is almost no support to women when it comes to collective complaints the available entities. Another highly critical point is that, as to accede to some support services, a certificate is required about being a victim of gender-based violence, with only the region of Madrid amending such requirement in 2018 (GREVIO, 2018:18-19). When investigating the Italian situation, information showed that, on the one hand, there is little awareness of and information about the available channels women and groups of women can recur to, with the CEDAW Convention and related Individual Complaint procedure being almost unknown. On the other hand, Civil Society Organizations arise again as the main source of information and assistance concerning complaints to other regional or international instruments (D.i.Re., 2018:29-30; GREVIO, 2020:50).

As a result of this analysis, the different behaviour of Governments have been underlined. This, first and foremost, refers to the instability of inter-agency networks, but it does not only depend on stereotyped behaviours. Despite these are still too much present and rooted even among those individuals who should

take care and assist victims of VAW and DV, political instability is the cause of weak inter-agency network and varying degree of budgeting to plans and policies aimed at eradicating VAW. When a Country changes Governments more than often, this implies a different perspective over the social plagues objects of the present dissertation. Consequently, the priority, sensibility and degree of ad-hoc action may increase or decrease compared to what has been planned and implemented in past times.

Another relevant element deemed important at this point of the dissertation is related to NGOs. As we have seen, they are often filling Governmental gaps in the provision of different kinds of services: assistance in submitting complaints; medical, legal, psychological counselling; housing and shelter; protection against secondary victimization and repeated violence. Governmental failure not only refers to difficulties in providing these measures, but also in the coordination with local authorities and in properly acting against violence when one individual decides to report. The previously hinted persistent discriminatory behaviour is another crucial area of action of NGOs; they frequently are the ones providing training and information to professionals, either doctors, lawyers, psychologists, judges, their work being fundamental for the mental change of those supposed to help survivors. What is worrying by the way is the little awareness, revealed by the reports, about the available State's or non-State's services, but first and foremost of procedures allowing survivors to be appointed adequate remedies for their sufferings, as well as for State's inaction. This constitutes in fact a huge matter of non-compliance by some among the first Countries interested in and ratifying the Istanbul Convention. The lack of trust often revealed by professionals responsible for assisting survivors towards the same testimonies of the latter does not help the implementation and impact of the existing Human Rights Treaties formulated ad-hoc for women's protection. Consequently, since women and constituencies in general are low informed and aware of the wide range of existing possibilities and tools, the consideration, relevance, compliance with monitoring mechanisms risk to be extremely lowered.

4.CONCLUSIONS:

The Role of Culture and NGOs for a Major Impact of International Monitoring Mechanisms on Women's Human Rights

In the present Dissertation, we have explored the emergence of Women's Rights within the panorama of International Human Rights Law. More precisely, we have investigated the crucial features and key concepts of two milestones for the protection of women from violence and discrimination: the United Nations 1979 CEDAW Convention and the 2014 Council of Europe 'Istanbul Convention'. Each of these Treaties, as it has been possible to see, foresees an entity of independent experts responsible for co-operating with member-States and supporting them in the gradual implementation of provisions. The role and features of these monitoring bodies have been another major issue studied in the present Dissertation, for then exploring the two monitoring procedures and the actors involved in each one.

In the First Chapter, we have explored the emergence of Women's Rights as Human Rights and the factors hindering their earlier affirmation in the international arena. At this last respect, it has been possible to ascertain that concepts like 'gender', 'gender stereotype', 'gendered role', 'multiple discrimination' and women's inequality in general, they all have their roots in socially-constructed norms and beliefs, 'artificially' created and then imposed over women and girls worldwide. A further consideration I want to make here is that gendered roles not only discriminated women in their access to fundamental freedoms and rights, but they influenced men and boys as well. In fact, since society imposed expected jobs and roles on each sex, males as well experienced some sort of pressure and were taught since their youth about the 'appropriate' behaviour, always in a counterposed perspective to that of women. In the First Chapter, we also understood the reasons why the CEDAW Convention is considered as the 'Bill of Rights of Women', as well as the importance of the different approach enshrined within the Istanbul Convention.

The Second Chapter focused on the two Monitoring Mechanisms each Convention establishes within its provisions, outlining the various steps and actors involved. As well, it has been possible to appreciate the improvements brought to each Treaty throughout time, like the possibility individuals have since 2000 to submit their cases of alleged breaches of rights falling within the CEDAW Convention to the related Committee.

In the Third Chapter, the main concerns have been the problems and controversies hindering the potential maximum effectiveness of monitoring. The major problems arisen throughout time are related to the CEDAW monitoring, mainly since it is the older ad-hoc Convention of the two we considered in the present Dissertation. The consequences of the elements leading to delays or non-compliance mainly reflect on the dialogue State-Committee as well as on monitoring itself. One point that needs to be recalled is that some elements hindering States from adequately fulfilling their reporting obligations are due to the complexity of the International Human Rights Law system, while others – like the concept of ‘decoupling’ – are related to behaviours and norms having their foundations in traditions, the power of religion or culture in general. The last section of the Chapter 3 concerned the GREVIO Committee and the outcomes of some highly recent reports provided to or by it on three member-States to the Istanbul Convention: Spain, France and Italy. As I have underlined towards the end, NGOs and other non-governmental groups reveal themselves as fundamental for victims and survivors of abuses, since they often are the main actors providing a full range of services necessary in the aftermaths of the traumatic experience.

There are two basic assumptions I want to make while concluding this Dissertation. First, culture and its beliefs are among the basis of discrimination and gender disparities; thus, a different culture can imply a different attitude and value of women, their roles and peculiarities. Second, the role and work of NGOs are pivotal both for the support and recovery of victims after their traumatic experiences, but even more for societal awareness of the horrible features and consequences of VAW, DV, as well as gender stereotypes and multiple discrimination. NGOs and CSOs are disseminated everywhere both at national and international level, for which they can be a major point of reference for full

and correct information about social plagues affecting society in general (not only women and girls), as well as about the tools and mechanisms created at our advantage by the International Human Rights system.

Since NGOs are present in so many different fields, including the training of professionals and State's personnel (social services, lawyers, judges, police and law-enforcement officials), it is my view that member-States to Conventions protecting women should not hinder them from fulfilling their crucial tasks. Conversely, as also foreseen by Article 9 of the Istanbul Convention, Governments should strengthen co-operation with and grant resources to these non-State actors in the design and implementation of co-ordinated, multi-agency policies ensuring victims' protection, the prosecutor of perpetrators, as well as boosting societal change. It is doubtless that constant adequate funding can be difficult in these years due to either political or economic instability, but Governments are encouraged, also by international Treaties, not to exclude from their concerns or ignore the impact of non-State actors in the fight against discrimination and inequalities.

Objective actors outside Governmental interests, like NGOs and CSOs, are made up by professionals – like lawyers, physicists, psychologists, etc. – but first and most importantly by individuals, both men and women, concerned with and happy to help victims to re-gain full health and – possibly – a happy life. Since these associations are composed of common individuals, their impact is the result of various initiatives carried out by their members. This means, from my point of view, that the boost for important social changes starts from many little apparently insignificant actions each of us can perform in his or her own surroundings to make them fairer for women and girls.

How can individuals' actions and NGOs improve the relevance and impact of monitoring? As hinted, NGOs also perform awareness-raising and information campaigns on VAW and gender-based discrimination and, by being widely disseminated, it can be easy for individuals to reach out to one and get properly informed. Information and social awareness are, from my perspective, crucial for society to know about the existence of ad-hoc Treaties and related protected

rights. Awareness is hence also crucial for monitoring; only if society understands that the groups of experts established by the Conventions are there to help their Governments and support the respect for their rights, this can lead to a different consideration of the monitoring process. Major awareness on the scope and rights enshrined by the provisions of those Treaties can also lead people to follow with greater attention and interest the behaviour of their Governments towards their obligations. Consequently, society can raise their demands for greater compliance with State's obligations in case they fail, with this including the respect for proper periodic reporting. Societal awareness of monitoring mechanisms on women's rights, both through individuals' actions and NGOs-led campaigns, can become pivotal in incentivising Governments to be more in line with what is required by Conventions and by the monitoring bodies' General Recommendations at the end of each cycle. Major societal awareness, hence, can start a circle leading to the aspired gradual compliance and respect for women's rights and equality; this cycle can be, thus, the result of actions and efforts coming from different entities. On the one hand, citizens' claims through NGOs, CSOs or even social media can put pressure on Governments. The latter, as to maintain socio-economic stability and its international reputation, can improve its efforts for respect of Treaty provisions and for a proper reporting; this means, among others, properly and adequately consulting non-State actors and welcoming their contributions. Consequently, when reports are properly submitted and in due times, appreciations by the monitoring body can be easier to come. If reporting is adequately carried out, this also means that the Governments understood the perspective and the advantages constant monitoring brings: support and work side by side with all those actors interested in a better Human Rights situation, not a judgement. The circle then starts again, with the positive impact of monitoring cycles accumulating over time. The advantages of monitoring procedures being public and of the presence of independent experts do not stop at the domestic level or in the relation between a single member-State and the Committee (either the CEDAW or GREVIO). In fact, publicity of documents implies that other States can refer to the successful solutions and policies experimented by a fellow Country as to solve similar or identical problems.

The ultimate, optimal outcomes of a peaceful situation, of an ongoing international co-operation among member-States to the CEDAW and Istanbul Conventions and of the efficient constructive dialogue between each of them and the two monitoring bodies would be as follows. On the one hand, the peaceful environment and the spread of good practices would boost international cooperation. On the other hand, if Countries entertain a constructive dialogue with a super partes entity, this also means that they welcome and disseminate their suggestions to citizens and NGOs; if such level of multi-agency communication is achieved, member-States will be able to appreciate the potential positive impact of the monitoring mechanisms. Overall, in the long run, such situation would lead first of all to the achievement of substantive equality and – hopefully – to the major, deep socio-cultural change and the subsequent elimination of all forms of violence.

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